

NEW APPLICATION



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ORIGINAL

Date: November 15, 2013

To: **Docket Control**
Arizona Corporation Commission
1200 West Washington St.
Phoenix, AZ 85007

From: Robert T. Hardcastle
Circle City Water Co. LLC

W-03510A-13-0397

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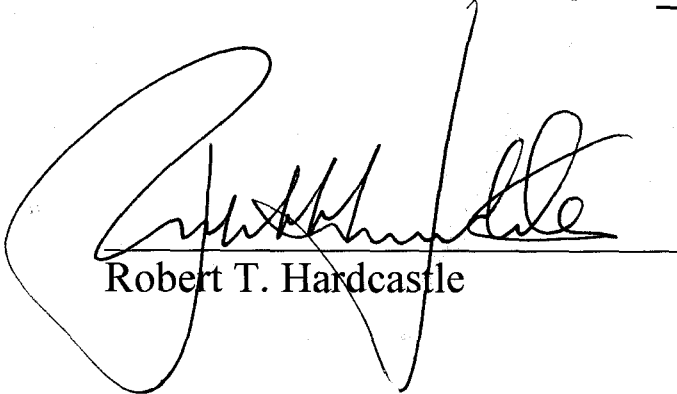
DOCKET NO. W-03510A-13-_____

Arizona Corporation Commission
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By:


Robert T. Hardcastle

ARIZONA CORPORATION COMMISSION
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NEW APPLICATION
BEFORE THE ARIZONA CORPORATION COMMISSION

Robert T. Hardcastle
Circle City Water Company, LLC
P.O. Box 82218
Bakersfield, CA 93380-2218
Representing Itself In Propria Persona

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AZ CORP COMMISSION
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COMMISSIONERS

Bob Stump, Chairman
Bob Burns, Commissioner
Brenda Burns, Commissioner
Gary Pierce, Commissioner
Susan Bitter Smith, Commissioner

IN THE MATTER OF THE)
APPLICATION OF CIRCLE CITY)
WATER COMPANY, LLC FOR AN)
EXTENSION OF ITS EXISTING)
CERTIFICATE OF CONVENIENCE AND)
NECESSITY FOR WATER SERVICE)

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Docket No. W-03510A-13-0397

**APPLICATION TO DELETE
CERTIFICATE OF
CONVENIENCE AND
NECESSITY AS EXTENDED
IN DECISION NO. 68246,**

AND

**MOTION TO DELETE
REQUIREMENT IN DECISION
NO. 68246 RELATED TO
FUTURE RATE APPLICATION**

Circle City Water Company, LLC (“Circle City” or “Company”) hereby files this Application for Deletion of its Certificate of Convenience and Necessity (“CC&N”) as Extended by Decision No. 68246 (October 25, 2005).

BACKGROUND

Circle City first received an expression of interest to develop the project from Harvard Investments, Inc. (“Harvard” or the “Developer”) in 2004 known as Lake Pleasant 5000 (“Project”). After significant negotiations over a lengthy period of time

1 Circle City and the Developer agreed to seek regulatory approvals to extend Circle City's
2 CC&N to include the proposed Project area. On February 11, 2005 Circle City and the
3 Developer executed the Water Facilities Agreement which provided water service to
4 Phases I and II of the Project (see attached Exhibit II). Subsequently, in November 2007
5 Circle City, the other ownership partners of Phase I including the Developer, known as
6 Warrick 160 LLC for the purposes of this portion of the Project, and the Central Arizona
7 Groundwater Replenishment District ("CAGR") executed the Agreement and Notice of
8 Municipal Provider Reporting Requirements for Warrick Property Regarding
9 Membership in the Central Arizona Groundwater Replenishment District (the "CAGR
10 Agreement") (see attached Exhibit III). As a result of this Agreement, the Developer
11 became a Member Lands in the CAGR and met the requirements for an assured water
12 supply for Phase I of the Project in the Active Management Area ("AMA") of the
13 Arizona Department of Water Resources ("ADWR").

14 On March 2, 2005, Circle City filed an application for an extension of its
15 CC&N with the Arizona Corporation Commission (the "Commission") to provide public
16 water service to the Project, located in Maricopa County. The Project was described in
17 two sections as Phase I and Phase II.

18 The Phase I portion of the Project related to 160 acres of land for 78 residential
19 lots northeast and contiguous to Circle City's existing CC&N also known as the Warrick
20 160 portion.

21 The Phase II portion of the Project related to 4,882 acres located approximately
22 five miles north of Circle City's existing CC&N that would be connected by a series of
23 newly developed main extensions, 7.6 million gallons of water storage, Central Arizona
24 Project ("CAP") treatment plant, and related appurtenances. The Project was planned for
25 10,00 dwelling units having peak day demand of more than 5,255 gallons per minute.
26 The engineers cost estimate for the combined cost of water infrastructure and onsite
27 distribution for the Project exceeded \$55,000,000.

28 On June 28, 2005 Commission Staff filed its Staff Report recommending
29 approval of the application, subject to several conditions.

1 On July 19, 2005 Commission Staff docketed a Supplemental Staff Report
2 recommending approval of the application, subject to several conditions.

3 On October 25, 2005 the Commission issued Decision No. 68246 (the
4 "Decision") approving Circle City's application, subject to several conditions (see
5 attached Exhibit I).

6 DISCUSSION

7 8 **I. THE PROJECT IS "NOT VIABLE" AND THERE IS NO PRESENT OR** 9 **FUTURE NEED FOR WATER UTILITY SERVICE.**

10
11 Decision No. 68246 was issued in October 2005. At that time there was a plan,
12 or at the very least a strong presumption, to develop and construct the Project in the near
13 future or as quickly as the development resources to do so could be secured and
14 mobilized. However, the Project never got developed beyond the initial entitlements
15 phase.

16 Currently, more than 8 years later, there is no plan to develop or construct the
17 Project. According to the Developer, the properties in the general area of the Project have
18 shown no development interest to date. The Developer has indicated that it could be as
19 long as 10 more years before the area around the Project might develop. The Developer
20 has indicated it is "property rich and cash poor" and has no immediate plans for
21 development of the Project.¹

22 The Developer has described the Project as "not viable".² Further, the
23 Developer agreed with the Company to unwind all regulatory and contractual
24 arrangements with Circle City related to the Project including the deletion of the
25 extended CC&N; the termination of the Water Facilities Agreement; cancellation as a
26 Member Lands with the Central Arizona Groundwater Replenishment District
27 ("CAGRD") for Phase I of the Project known to Circle City as the Warrick 160 Project;

¹ Circle City met with the Developer at its offices on March 14, 2013 to ascertain the development status of the Project when these comments were made. The Developer provided a detailed discussion, using a wall map, to describe those areas in the Greater Phoenix area that were currently being developed and discussed the unlikely near term prospects of development of the Project.

² Stated by the Developer in a telephone conference of April 12, 2013.
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1 and, cancellation of the Maricopa County Franchise Agreement.³ To the extent that Circle
2 City incurred costs related to this unwinding, the Developer suggested and offered, to be
3 financially responsible for at least one-half of all costs related thereto.

4 Several weeks later, after significant “unwinding” work had been completed,
5 Circle City wrote to the Developer reviewing the current status of the “unwinding”
6 arrangements (see Exhibit IV). In this electronic message, Circle City restated its
7 understanding of the prior instructions issued by the Developer, as: (a) payment of
8 outstanding legal and engineering invoices, (b) confirmation that the Developer had
9 previously determined the Project was currently “not viable”, (c) confirmation that the
10 Developer could not “determine when it would become a viable future project”, (d)
11 confirmation that Circle City and the Developer had “mutually agreed to cause the
12 winding up of all arrangements” related to the Project, including (i) termination of the
13 approved Water Facilities Agreement, (ii) deletion of the extended CC&N and
14 extinguishment of any related conditions approved under Decision No. 68246, and (iii)
15 termination of the Phase I agreement between the Developer, Circle City, and the
16 CAGRD. Circle City advised the Developer that it would require between 90 and 120
17 days to effectuate the before mentioned “unwinding” arrangements at an approximate
18 cost of \$20,000. Circle City clearly stated in this electronic message that it was
19 “approving counsel to proceed with these tasks as expeditiously as possible”.

20 No interim notice or advisement had been received by Circle City from the
21 Developer.

22 Subsequently, the Developer apparently recognized that “unwinding” the
23 Project arrangements should include the approval of other Project partners as well. As a
24 result, the Developer requested Circle City, approximately one month later, to “hold” on
25 the “extinguishing/termination” of the unwinding arrangements until a partners meeting
26 was convened that confirmed and approved the Developers previous “unwinding”
27 decision.⁴

³ *Ibid*, Note 2

⁴ Developer’s electronic message of May 3, 2013.

1 In reply to the Developer's response, Circle City expressed its astonishment at
2 the Developer's "hold" instruction. Circle City again reminded the Developer that "we
3 clearly agreed the Project was not viable and that unwinding the Project was the only
4 reasonable thing to do". Circle City advised the Developer that extensive "unwinding"
5 work had already been conducted, at Circle City's expense, based on the Developer's
6 previous agreement and direction. Circle City advised the Developer that it was
7 "directing [it's] counsel to proceed".⁵

8 Later on August 7, 2013, at the suggestion of Circle City, a meeting was
9 arranged with the Developer to discuss the most current status of the Project. The
10 Developer explained that, at its recent partner's meeting, its partners disagreed with the
11 Developer's "non-viable" conclusion and stated that it did not want to delete the CC&N
12 approved in Decision No. 68246 or terminate its membership with CAGRD. The
13 Developer offered no basis for its partner's conclusion or decision.

14 At the meeting Circle City asked the Developer several questions:

15 Question Circle City: Does the Project have any development schedule?

16 Answer Developer: No.

17 Question Circle City: Are architects or engineers working on Project
18 drawings?

19 Answer Developer: No.

20 Question Circle City: When will Project grading start?

21 Answer Developer: There is no grading scheduled.

22 Question Circle City: When is pipeline construction scheduled?

23 Answer Developer: There is no pipeline construction scheduled.

24 Question Circle City: When will Circle City be selling water?

25 Answer Developer: Doesn't know.

26 As part of this discussion the Developer reiterated that it "didn't know if the Project was
27 viable within 10 years or not".

⁵ *Ibid*, Note 4.
Docket No. W-03510A-13- _____

1 At the conclusion of this meeting Circle City asked the Developer, as follows:

2 Question Circle City: In the course of only 4 months how does a project
3 go from "non-viable" in need of "unwinding" to suddenly "viable" and worthy of some
4 unknown future development?

5 Answer Developer: Doesn't know.

6 Question Circle City: Why would any water business carry, since 2005,
7 at its own cost without reimbursement, the expense of a CAP water allocation for a
8 project that was "unviable" but now is suddenly "viable"; for a Project where no
9 development schedule is even in progress, much less existing; for a Project where
10 pipeline construction isn't scheduled; and, for a Project where a date for water sales
11 cannot be determined?

12 Answer Developer: Doesn't know.

13 The Developer has described the Project as "not viable" and doesn't know if it
14 will ever be viable. As such, there is no need for water service to this Project.

15 On October 7, 2013 Circle City received correspondence from the Maricopa
16 County Environmental Services Department ("MCESD") indicating that the original
17 Project Approval to Construct issued on June 17, 2008 had expired on June 17, 2009
18 unless Project construction had been substantially started (see attached Exhibit V). The
19 MCESD indicates that a new application with appropriate documentation and fees would
20 be required to be resubmitted for the Project. No construction has occurred on the Project.

21 In light of all these facts, the Company respectfully requests that the CC&N
22 extension area granted in Decision No. 68246 be deleted in its entirety.

23
24 **II. DECISION NO. 68246 CONTAINS REQUIREMENTS FOR CIRCLE**
25 **CITY'S NEXT RATE CASE FILING (SCHEDULED FOR 2014) THAT**
26 **SHOULD BE DELETED SINCE THE PROJECT NEVER DEVELOPED TO**
27 **INURE ANY BENEFIT TO EXISTING RATEPAYERS.**

28
29 The Commission was, in Decision No. 68246, very specific to condition
30 approval upon Circle City demonstrating, in its next rate application, the positive impact
31 of the Project:

1
2 **Finding of Fact No. 35 (8):** (page 9 at lines 11-13)
3

4 *Circle City must demonstrate in its next rate case filing that its*
5 *existing 169 customers will be positively impacted by the addition of*
6 *new water facilities necessary to serve the new CC&N.*
7

8 The Commission reiterated this conditional qualification in Decision No.
9 68246, as follows:
10

11 **Finding of Fact No. 36:** (page 9, lines 16-18)
12

13 *Staff further recommends that the Commission's approval of the*
14 *extension of the Certificate should be rendered null and void*
15 *without further Order from the Commission should the Company*
16 *fail to meet any of the above conditions within the time specified.*
17

18 In the Conclusions of Law section of Decision No. 68246, item no. 6 at page 11
19 lines 13-14, the Commission also recognized the importance of these conditional
20 approval statements by indicating:

21 *The application to extend the Certificate for the area described in*
22 *Exhibit A should be granted subject to the conditions set forth in*
23 *Findings of Fact Nos. 35 and 36 above.*
24

25 And, finally, in the ordering paragraphs of Decision No. 68246, page 12 at lines
26 10-12, the Commission ordered:

27 ***IT IS FURTHER ORDERED that Circle City Water Company LLC***
28 ***shall demonstrate in its next rate case filing that its existing 169***
29 ***customers have been positively impacted by the addition of new***
30 ***water facilities necessary to serve the extension area.***
31

32 *(additional emphasis provided above)*
33

34 There is no dispute that neither Phase I or II of the Project have been built, as
35 described above. Further, there are no plans to build the Project as no construction or
36 development schedule has been provided by the Developer. There is also no dispute that
37 Circle City plans to file a rate application in the first or second fiscal quarter of 2014
38 using 2013 as its test year.

1 Accordingly, Circle City is prejudiced in the filing of its prospective 2014 rate
2 application because if the conditional requirements of this section. Circle City cannot
3 demonstrate a positive impact for a Project that has not been built and has no plans of
4 being built.

5 This requirement under Decision No. 68246 should be deleted.
6

7 **III. CONCLUSION**

8 In summary, Circle City respectfully requests that the Commission grant this
9 Application, as follows:

10 **A. DELETION OF THE CC&N EXTENSION AREA WHICH** 11 **INCLUDES THE PROJECT**

- 12 • The Project has not been built.
- 13 • There is no development or construction schedule for the Project.
- 14 • The Developer does not plan to build the Project.
- 15 • The Developer says the Project is “not viable”.
- 16 • The Developer says the Project may not be developed for another 10
17 years.
- 18 • The Developer has indicated that its Member Lands membership with
19 CAGRDR should be terminated.
- 20 • The Developer has indicated there is no known need for water service to
21 the Project at this time, or in the near future.
- 22 • Circle City should not be obligated or burdened with being responsible
23 for providing water service, as described in Decision No. 68246, to an
24 entity that has no plans for constructive use of its water.

25 **B. DELETION OF THE REQUIREMENT TO DEMONSTRATE THE** 26 **POSITIVE IMPACT OF THE PROJECT UPON EXISTING RATE** 27 **PAYERS.**

- 28 • Circle City plans to file a rate application in 2014.
29

- Decision No. 68246 specifically requires Circle City to demonstrate, in its rate application, a positive impact on its existing rate payers as a result of the Project being developed.
- The Project has not been built.
- There are no plans to build the Project.
- Circle City cannot demonstrate a positive impact on ratepayers, as required by Decision No. 68246, based on a Project that does not exist, and thus cannot comply with the order.

RESPECTFULLY SUBMITTED this 15th day November 2013.

Circle City Water Company, LLC

By: 

Robert T. Hardcastle
In Propia Persona

ORIGINAL and 13 copies filed
this 15th day November 2013, with:

Docket Control
Arizona Corporation Commission
1200 West Washington St.
Phoenix, AZ 85007

And copies mailed to the following:

_____, Administrative Law Judge
HEARING DIVISION
Arizona Corporation Commission
1200 West Washington St.
Phoenix, AZ 85007

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14 Utilities Division
15 Arizona Corporation Commission
16 1200 West Washington St.
17 Phoenix, AZ 85007
18

19 By: 

20 Robert T. Hardcastle
21 Circle City Water Company, LLC
22

23 **END**
24
25

EXHIBIT I

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

OCT 25 2005

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

DOCKET NO. W-03510A-05-0145

IN THE MATTER OF THE APPLICATION OF
CIRCLE CITY WATER COMPANY, LLC FOR
APPROVAL OF A HOOK-UP FEE TARIFF.

DOCKET NO. W-03510A-05-0146

IN THE MATTER OF THE APPLICATION OF
CIRCLE CITY WATER COMPANY, LLC FOR AN
EXTENSION OF ITS EXISTING CERTIFICATE
OF CONVENIENCE AND NECESSITY FOR
WATER SERVICE.

DECISION NO. 68246

OPINION AND ORDER

DATE OF HEARING:

July 25, 2005

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Yvette B. Kinsey

APPEARANCES:

Jay Shapiro, FENNEMORE CRAIG, on behalf
of Circle City Water Company L.L.C.; and

Mr. David Ronald, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

BY THE COMMISSION:

On March 2, 2005, Circle City Water Company, L.L.C. ("Circle City" or "Company") filed an application for an extension of its Certificate of Convenience and Necessity ("CC&N" or "Certificate") with the Arizona Corporation Commission ("Commission") to provide public water service to a development known as Lake Pleasant 5000 in Maricopa County. Also on March 2, 2005, Circle City filed an application for approval for a Hook-Up Fee Tariff ("Hook-Up Fee") related to the above-referenced project.

On March 14, 2005, Circle City filed a Motion to Consolidate the above-referenced applications and the request was granted by Procedural Order issued on April 4, 2005.

On March 30, 2005, the Commission's Utilities Division Staff ("Staff") filed a Letter of Insufficiency in this docket.

SAYKinsey/water/circle city.doc

1

DOCKET NO. W-03510A-05-0145 et al

1 On April 14, 2005, the Company filed a Notice of Filing Amended Legal Description.

2 On May 5, 2005, Circle City docketed its Response to Staff's Data Request.

3 On May 6, 2005, Staff issued notice that the application had met the sufficiency requirements
4 of A.A.C. R14-2-411(C).

5 On May 11, 2005, a Procedural Order was issued setting a hearing on July 25, 2005 on the
6 application and also setting associated procedural deadlines including the publication of notice of the
7 hearing.

8 On June 28, 2005, Staff filed its Staff Report, recommending approval of the application,
9 subject to certain conditions.

10 On June 28, 2005, the Company filed its Certification of Publication and Proof of Mailing.

11 On July 6, 2005, Circle City filed a Response to Staff's Report, opposing Staff's
12 recommendation that the Company show a "positive impact" on existing customers by the addition of
13 the new water facilities necessary to serve the new CC&N in the Company's next rate case.

14 On July 8, 2005, Gale Graves, a residential customer, filed a Motion to Intervene and her
15 Motion was granted by Procedural Order issued on July 22, 2005.

16 On July 8 and 12, 2005, several existing customers filed letters in this docket.

17 On July 12, 2005, Harry Dame, Fire Chief of Circle City/Morristown Volunteer Fire
18 Department, filed a Motion to Intervene and his Motion was granted by Procedural Order issued on
19 July 20, 2005.

20 On July 19, 2005, Staff docketed a Supplemental Staff Report, recommending approval
21 subject to additional compliance issues.

22 On July 25, 2005, a full public hearing was convened before a duly authorized Administrative
23 Law Judge of the Commission at its offices in Phoenix, Arizona. The Company and Staff appeared
24 with counsel and presented evidence and testimony. Several members of the public appeared and
25 gave public comment. During the hearing, the Company's witness addressed several compliance
26 issues that were raised by Staff. Specifically, Staff believed the Company was in noncompliance
27 with all of the requirements set forth in Decision Nos. 64570, 65221, 58763 and 63982. The parties
28 agreed that the Company would submit a late-filed exhibit demonstrating compliance with the above

68246

DOCKET NO. W-03510A-05-0145 et al.

1 referenced matters, a late-filed exhibit regarding recent water outages and the Company's
2 Interconnection Agreement. Staff agreed to file a response to both the compliance issues and the
3 water outage analysis. All matters were taken under advisement at the conclusion of the hearing.

4 On August 8, 2005, Circle City filed a Notice of Late-Filed Exhibit which contained a Report
5 on the 2005 Service Interruptions and a revised Water Master Plan for the Lake Pleasant 5000
6 extension area.

7 On August 11, 2005, Circle City filed correspondence directed to Arizona Public Service
8 ("APS") regarding the Company's recent service interruptions.

9 On August 15, 2005, Staff filed its Response to Late-filed Exhibits filed by Circle City.

10 * * * * *

11 Having considered the entire record herein and being fully advised in the premises, the
12 Commission finds, concludes, and orders that:

13 FINDINGS OF FACT

14 1. Pursuant to authority granted by the Commission, Circle City is an Arizona
15 Corporation engaged in the business of providing water service to approximately 169 customers
16 within portions of Maricopa County.

17 2. Circle City received its CC&N in Decision No. 31121 (August 15, 1958) as Circle City
18 Development Company. Circle City Development Company was transferred to Consolidated Water
19 Company in 1964 and by Commission Decision No. 51286 (August 8, 1980) transferred to
20 Consolidated Water Co., LTD. In Commission Decision No. 59754 (July 18, 1996), Consolidated
21 Water Company LTD transferred its assets and Certificate of Convenience and Necessity to Brooke
22 Water, L.L.C. Brook Water L.L.C. operated the company as the Circle City Division and in
23 Commission Decision No. 60972 (June 16, 1998), the Circle City Division's assets and CC&N were
24 transferred to Circle City Water Company, L.L.C. Circle City is now owned by Brooke Resources
25 L.L.C., the sister company of Brooke Water L.L.C.

26 3. Circle City provides water services for both residential and commercial properties.

27 4. Circle City currently operates under rates effective January 1, 1998 granted in
28 Decision No. 55839.

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Plaintiff's Exhibit

5. On March 2, 2005, the Company filed an application for an extension of its Certificate for water services to include a development known as Lake Pleasant 5000 ("Development"), located in Maricopa County approximately one mile north of the State highway 74 and 211th Avenue. Additionally, the extension area includes 160 acres at the northwest corner of 235th Avenue and Joy Ranch Road in Maricopa County. A legal description of both proposed extension areas is attached hereto and incorporated herein by reference as set forth in Exhibit A.

6. Notice of the Application was provided in accordance with the law.

7. On June 28, 2005, Staff filed its Staff Report recommending approval of the application subject to certain conditions.

8. On July 19, 2005, Staff filed a Supplemental Staff Report again recommending approval of the application, but included additional compliance issues.

9. Harvard Investments ("Developer") has requested Circle City extend its water service to approximately 10,000 residential and commercial units in a 5,000 acre planned development. The proposed main extension area is five miles northeast of Circle City's certificated area and is not adjacent to it. The additional 160 acres in the proposed extension area is adjacent at one point to Circle City's certificated area.

10. Circle City's existing system is comprised of one well producing 110 gallons per minute, a 50,000 gallon storage tank, a booster system and a distribution system serving 169 customers.

11. The proposed new water system will be comprised of 11 wells, an 8.0 million gallon per day Central Arizona Project ("CAP") water treatment plant, storage tank capacity totaling 7.6 million gallons and a distribution system. The cost of the proposed plant facilities is estimated to be approximately \$55.4 million, consisting of \$30.0 million for off-site facilities and \$25.4 million for on-site facilities.

12. Staff believes the proposed cost estimates and plant items are reasonable.

13. Several members of the public appeared for the hearing and gave public comment regarding the proposed applications. Generally, the members of the public raised concerns that the water supply may be insufficient to handle the extension area as they had recently experienced low-

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1 level water pressure and some water outages.

2 14. Fire chief for the Circle City/Morristown Fire Department, raised concerns that there
3 are no fire hydrants in the existing neighborhoods and there are no plans for fire hydrants in the
4 extension areas. Further, he stated that the water tank capacity was insufficient and an increase in
5 capacity would ensure better fire protection.

6 15. A resident of Circle City and elected official of the Circle City Morristown Fire
7 Department, was also concerned about the sufficiency of the water and recent water outages. She
8 stated her neighborhood had experienced at least five or six service interruptions in the last six
9 months either where there was no water or very little water pressure.

10 16. During the hearing the Company's witness responded to the public comments.
11 Regarding the sufficiency issue he stated that having a good functioning water system with sufficient
12 water supply is the Company's primary concern. He concurred that the Company had recently
13 experienced some low-level water pressure and water outages in recent months. He further testified
14 the Company believed the problem was related to fluctuations in the power service coming into the
15 transformer, which powers the electrical systems and the pumps for the water system. He testified
16 that the Company believed that the variations in power caused the water system to shutdown, but that
17 the system was functioning properly because it was designed to shutdown in the event of power
18 surges. Additionally, the Company's witness stated that the Company was working with APS to
19 determine the source of the problem and that APS had installed a "chart recorder" to record the power
20 fluctuations. The Company agreed to provide the chart recorder data and outage analysis to the
21 Commission as a late-filed exhibit. Staff was ordered to file a Response to the Company's water
22 outage analysis.

23 17. The Company's witness further testified that the Company rented generators, at a cost
24 of \$8,000 for seven or eight days, to maintain service to its customers during the recent outages.
25 However, the witness stated that water companies are not required to have back up generators
26 according to regulations and generally small water companies do not have them because they are not
27 a "useful" expense and the cost is not recoverable.

28 18. The Company's witness stated that existing customers should benefit from an

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1 interconnection to the new CC&N water system because of the additional wells, booster pumps,
2 water storage tanks and the connection to the CAP water treatment plant.

3 19. The Company's witness also addressed the fire hydrant issue and stated not having fire
4 hydrants was problematic not only in protecting the Company's infrastructure, but also for the people
5 living in the community. Further, the witness testified the Company does not currently have an
6 approved tariff to provide fire protection and that there would need to be changes made to the
7 infrastructure in order to make fire protection effective. He stated that the Company was willing to
8 enter into dialogue with the fire department to discuss fire protection in the existing neighborhoods
9 and the extension areas to see if a workable solution could be reached.

10 20. In regards to the storage tank capacity issue, Staff's witness testified that when Staff
11 calculated the storage tank capacity according to Arizona Department of Environmental Quality's
12 ("DEQ") standard it showed that the Company was about 5,000 gallons short in its capacity, instead
13 of the 35,000 gallon shortage that Staff had reported in its Staff Report. Staff's witness concluded
14 that the 5,000 gallon shortage was not significant enough to conclude that the Company did not have
15 adequate storage for its existing customers.

16 21. Staff concluded that the proposed new water system will have adequate production
17 and storage capacity to serve existing customers and new customers in the CC&N extension areas.

18 22. Staff made no "used and useful" determination of the proposed plant facilities and no
19 particular treatment should be inferred for rate making or rate base purposes.

20 23. Staff's Report stated that the Company was delivering water that meets water quality
21 standards for Maricopa County Environmental Services Department. Staff recommended that the
22 Company file with Docket Control its copies of the developer's Certificate of Assured Water Supply
23 for the requested area within 24 months of a Decision in this matter. At the hearing, the Company's
24 witness raised concerns that the Company may not be able to comply with Staff's recommendation
25 because the project is scheduled in phases. Staff proposed modifying the language to read "the
26 Company should file with Docket Control copies of the developer's Certificate of Assured Water
27 Supply, for Phase 1 of the project, where applicable or when required by statute within 24 months of
28 a Decision in this matter." The Company agreed with Staff's modified language.

Witness 1160
Phase I
CAPED

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24. Circle City is located within the Phoenix Active Management Area ("ADWR"). Circle City is in compliance with its reporting and conservation requirements according to ADWR.

25. According to the Utilities Division Compliance Section there were no outstanding compliance issues for Circle City.

26. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic MCL in drinking water from 50 micrograms per liter ("ug/l") or parts per billion ("ppb") to 10 ug/l by January 23, 2006. Staff analyzed Circle City's arsenic level and concluded that the Company's arsenic level was 3 ppm and below the EPA's MCL.

27. Circle City does not have a Curtailment Plan Tariff. Staff recommends that Circle City file a Curtailment Plan to manage water shortages due to breakdowns, droughts, or other unforeseen events.

28. The Company will provide service to the extension areas at its existing rates and charges on file with the Commission for its existing system.

29. Circle City does not have a franchise agreement with Maricopa County for the proposed extension areas. Staff recommends that Circle City file a copy of the County Franchise Agreement for the extension within 365 days of the Decision in this matter.

30. On August 8, 2005, Circle City filed a Late-Filed Exhibit that included a Report on the 2005 Service Interruptions and a Water Master Plan for the Development. In the Service Interruption report the Company and APS concluded that the power fluctuations were caused by a faulty substation voltage regulator that was operating improperly. According to the Company's report, APS was redirecting power to the demand area to balance out the fluctuations and that APS had plans to replace the faulty regulator as soon as possible. Both the Company and APS believed that replacing the faulty regulator would correct the low-level water pressure and water outages that were affecting the Company. Additionally, the Company provided the Developer's Water Master Plan as a late-filed exhibit which showed an anticipated interconnection between the existing water system and the proposed new water system. See Exhibit B attached hereto and incorporated herein by reference.

31. In Staff's Response to the Company's late-filed exhibits Staff concluded that the Company's explanation and analysis of the outages and the water master plan for the interconnection

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1 between the existing water system and the proposed water facility were reasonable.

2 32. On March 2, 2005, the Company filed an application for approval of a Hook-Up Fee
3 Tariff.

4 33. Staff recommends a \$1,500 hook-up fee for all new 5/8 x 1/4 inch service connections.
5 This hook-up fee will generate approximately \$15 million in capital from Circle City's proposed new
6 service connections or approximately 27 percent of its total anticipated construction costs. Staff
7 reasoned that the \$1,500 hook-up fee should be considered a non-refundable Contribution in Aid of
8 Construction therefore balancing the capital structure of the Company and preventing an overly
9 subsidized private water company. Staff's proposed Hook-Up Fee Tariff is set forth below:

OFF-SITE HOOK-UP FEE

Meter Size	Size Factor	Total Fee
5/8" x 1/4"	1	\$ 1,500.00
3/4"	1.5	\$ 2,250.00
1"	2.5	\$ 3,750.00
1 1/2"	5	\$ 7,500.00
2"	8	\$12,000.00
3"	16	\$24,000.00
4"	25	\$37,500.00
6" or Larger	50	\$75,000.00

18 34. The Company did not oppose Staff's Hook-Up Fee Tariff.

19 35. Staff recommends approval of the Circle City's application for the extension of its
20 CC&N and approval of its Hook-Up Fee Tariff subject to the following conditions:

- 21 1. Circle City should file with Docket Control a copy of the Approval to
22 Construct for Phase I of this project within 24 months of a Decision in this
23 matter.
- 24 2. Circle City should charge its authorized rates and charges in the extension area.
- 25 3. Circle City should file with Docket Control copies of the developer's
26 Certificate of Assured Water Supply for Phase I of this project where
27 applicable or when required by statute within 24 months of a Decision in this
28

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1 matter.

2 4. Within 45 days of the effective date of the Order issued in this proceeding,
3 Circle City should file a Curtailment Plan Tariff and docket it as a compliance
4 item in this docket for review and certification by Staff.

5 5. The Hook-up fee Tariff should be set at \$1,500 for all new 5/8 x 3/4 service
6 connections, and graduated for larger meter sizes as reflected in Finding of
7 Fact No. 33.

8 6. Circle City should file a copy of the county franchise agreement for the
9 extension area with Docket Control within 365 days of a Decision in this
10 matter.

11 7. Circle City must demonstrate in its next rate case filing that its existing 169
12 customers will be positively impacted by the addition of the new water
13 facilities necessary to serve the new CC&N.

14 8. Circle City must also provide a complete summary of its accounting for CAP
15 M&I capital charges in its next rate case.

16 36. Staff further recommends that the Commission's approval of the extension of the
17 Certificate should be rendered null and void without further Order from the Commission should the
18 Company fail to meet any of the above conditions within the time specified.

19 37. The Company opposed Staff's condition that it must demonstrate in its next rate case
20 filing that its existing 169 customers will be "positively impacted" by the addition of the new water
21 facilities necessary to serve the new CC&N. In its Response, the Company asserted that the public
22 interest standard was met by the affirmative showing of a public need and Staff's analysis that Circle
23 City was a fit and proper entity to provide reliable water utility service at a reasonable rate. At the
24 hearing Staff argued that its recommendation was designed to ensure that existing customers received
25 the same benefits that new customers would experience under the new CC&N. Staff's witness further
26 testified that the Company did not file for new rates for the extension area and therefore Staff wanted
27 some assurance that existing customers were protected.

28 38. In addressing the "positive impact" part of its recommendation, Staff's witness

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1 described benefits such a interconnection agreement and improved water quality by installing a CAP
2 water treatment plant as items the Company could point to show a positive impact on existing
3 customers. But Staff's witness noted the benefits should not be limited to those items and that the
4 Company was in the best position to determine what "positive impact" there was on existing
5 customers. The Company argued that the standard Staff should have been proposing was that there
6 was no negative impact on existing customers instead of a positive impact. The Company also argued
7 that there was no Commission rule or statute that supported Staff's recommendation. Staff argued
8 that the public interest is broadly defined and therefore the Company should be ordered to show
9 positive impact at its next rate case.

10 39. Here, existing customers raised concerns that the level of service would decrease as a
11 result of the addition of the extension area. Existing customers reported water outages, low-level
12 water pressure and the lack of fire hydrants in their communities at the present time. The Company's
13 proposed new extension of its CC&N and new water facilities is an opportunity to make positive
14 changes for both existing and new customers by ensuring that there is a balanced level of service for
15 all customers. With the new water facilities existing customers will benefit from the interconnection
16 to a new water system. At the same time the infrastructure is being built the Company has the
17 opportunity to build a system that will provide adequate water storage capacity, fire protection and
18 eliminate the need for back up generators. The Company can also look at issues like redundancy in
19 the system to help avoid water outages. Therefore, in an effort to ensure that existing customers
20 receive a comparable level of service as new customers obtained through the granting of the CC&N
21 extension this order finds that Staff's recommendation that the Company show a "positive impact" on
22 its existing customers at its next rate case is in the public interest and is reasonable.

23 40. Because an allowance for the property tax expense of the Company is included in the
24 Company's rates and will be collected from its customers, the Commission seeks assurances from the
25 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
26 authority. It has come to the Commission's attention that a number of water companies have been
27 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
28 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure the

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1 Company shall annually file, as part of its annual report, an affidavit with the Utilities Division
 2 attesting that the company is current in paying its property taxes in Arizona.

3 41. Staff's recommendations in Findings of Fact Nos. 35 and 36 are reasonable.

4 CONCLUSIONS OF LAW

5 1. Applicant is a public service corporation within the meaning of Article XV of the
 6 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-252.

7 2. The Commission has jurisdiction over the Company and the subject matter of the
 8 application.

9 3. Notice of the application was provided in accordance with the law.

10 4. There is a public need and necessity for water utility service in the proposed service
 11 area described in Exhibit A.

12 5. Applicant is a fit and proper entity to receive an extension of its Certificate.

13 6. The application to extend the Certificate for the area described in Exhibit A should be
 14 granted subject to the conditions set for in Findings of Fact Nos. 35 and 36 above.

15 ORDER

16 IT IS THEREFORE ORDERED that the application of Circle City Water Company, LLC for
 17 an extension of its Certificate of Convenience and Necessity to include the area described in Exhibit
 18 A, attached hereto and incorporate herein by reference, is hereby granted subject to compliance with
 19 the following ordering paragraphs.

20 IT IS FURTHER ORDERED that Circle City Water Company, LLC shall charge the
 21 customers in the area more fully described in Exhibit A, its existing Maricopa rates and charges until
 22 further ordered by the Commission.

23 IT IS FURTHER ORDERED that Circle City Water Company, LLC shall file with Docket
 24 Control copies of the Certificate of Approval to Construct for Phase 1 of the project which shall
 25 include the proposed interconnection contained in Exhibit B within 24 months of this Decision.

26 IT IS FURTHER ORDERED that Circle City Water Company, LLC shall file a copy of the
 27 Developer's Assured Water Supply for Phase 1 of this project with the Commission, where
 28 applicable or when required by statute within 24 months of this Decision.

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1 IT IS FURTHER ORDERED that within 45 of the effective date of this Decision, Circle City
2 Water Company, LLC shall file a Curtailment Plan Tariff and docket it as a compliance item in this
3 docket for review and certification by Staff.

4 IT IS FURTHER ORDERED that Circle City Water Company, LLC shall file a copy of the
5 county franchise agreement for the extension area with Docket Control within 365 days of this
6 Decision.

7 IT IS FURTHER ORDERED that if Circle City Water Company, LLC fails to meet the above
8 conditions within the time specified, this Decision is deemed null and void without further Order of
9 the Arizona Corporation Commission.

10 IT IS FURTHER ORDERED that Circle City Water Company, LLC shall demonstrate in its
11 next rate case filing that its existing 169 customers have been positively impacted by the addition of
12 the new water facilities necessary to serve the extension area.

13 IT IS FURTHER ORDERED that Circle City Water Company, LLC shall file a rate review
14 application with the Director of the Utilities Division by no later than three years from the effective
15 date of this Decision.

16 IT IS FURTHER ORDERED that Circle City Water Company, LLC shall charge a Hook-Up
17 Fee of \$1,500 for all new 5/8 x 3/4 service connections and graduated for larger meter sizes as
18 reflected in Findings of Fact No. 33 and the Hook-Up Fee shall be considered a non-refundable
19 Contribution in Aid of Construction.

20 IT IS FURTHER ORDERED that Circle City Water Company, LLC shall file in Docket
21 Control, an Off-Site Hook-Up Fee Tariff Schedule conforming to the form of tariff attached as
22 reflected in Staff's Engineering Report.

23 IT IS FURTHER ORDERED that Circle City Water Company, LLC shall submit a calendar
24 year Off-Site Hook-Up Fee status report each January 31st to Docket Control for the prior twelve (12)
25 month period, beginning January 31, 2006, until the hook-up fee tariff is no longer in effect. This
26 status report shall contain a list of all customers that have paid the hook-up fee tariff, the amount each
27 has paid, the amount of money spent from the account, the amount of interest earned on the tariff
28 account, and a list of all facilities that have been installed with the tariff funds during the 12 months

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1. period.

2. IT IS FURTHER ORDERED that Circle City Water Company, LLC shall annually file as part
3 of its annual report, an affidavit with the Utilities Division attesting that the Company is current in
4 paying its property taxes in Arizona.

5. IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6. BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7. 
8. CHAIRMAN


COMMISSIONER

10. 
11. COMMISSIONER


COMMISSIONER


COMMISSIONER

13. IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this 26 day of Oct., 2005.

18. 
19. BRIAN C. McNEIL
20. EXECUTIVE DIRECTOR

21. DISSENT _____

22. DISSENT _____

1 SERVICE LIST FOR: Circle City Water Company
2 DOCKET NO.: W-03510A-05-0146 and W-03510A-05-0145

3
4 Jay L. Shapiro
5 Pennemore Craig
6 3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012

7 Gale Graves
8 144 Peretz Circle
Morristown, AZ 85342

9 Harry Dame
10 P.O. Box 26
Morristown, Arizona 85342

11
12 Christopher Kempley, Chief Counsel
Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
Phoenix, Arizona 85007

15 Ernest Johnson, Director
16 Utilities Division
ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
Phoenix, Arizona 85007

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SOUTHWESTERN STATES SURVEYING, INC.

Professional Land Surveying

Randy S. Delbridge, President

21418 North 23rd Avenue • Phoenix, Arizona 85027
Phone (602) 888-4225 Fax (602) 888-0728

DESCRIPTION FOR TOTAL AREA

Job no. 210780

April 13, 2005

Being all of Sections 5, 6, 7, 8, 9, 17, 18 and a portion of Section 4, Township 8 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

BEGINNING at the Southwest corner of said Section 18, being a G.L.O. Brass Cap;

THENCE North 00 degrees 01 minutes 37 seconds East, along the West line of the Southwest quarter of said Section 18 a distance of 2940.12 feet to the West quarter corner of said Section 18, being a G.L.O. Brass Cap;

THENCE North 00 degrees 02 minutes 20 seconds West, along the West line of the Northwest quarter of said Section 18 a distance of 2538.18 feet to the Northwest corner of said Section 18, being a G.L.O. Brass Cap;

THENCE North 00 degrees 00 minutes 00 seconds East, along the West line of said Section 7, a distance of 5254.82 feet to the Northwest corner of said Section 7, being a G.L.O. Brass Cap;

THENCE North 00 degrees 07 minutes 21 seconds East, along the West line of the Southwest quarter of said Section 6 a distance of 2940.71 feet to the West quarter corner of said Section 6, being a G.L.O. Brass Cap;

THENCE North 00 degrees 07 minutes 15 seconds West, along the West line of the Northwest quarter of said Section 6 a distance of 2538.20 feet to the Northwest corner of said Section 6, being a G.L.O. Brass Cap;

THENCE South 89 degrees 55 minutes 08 seconds East, along the North line of the Northwest quarter of said Section 6 a distance of 2498.21 feet to the North quarter corner of said Section 6, being a G.L.O. Brass Cap;

THENCE South 89 degrees 10 minutes 12 seconds East, along the North line of the Northeast quarter of said Section 6 a distance of 498.80 feet to the South quarter corner of Section 31, Township 7 North, Range 2 West, being a G.L.O. Brass Cap;

THENCE North 89 degrees 50 minutes 21 seconds East, continuing along the North line of the Northwest quarter of said Section 6 a distance of 2140.86 feet to the Northwest corner of Section 6, being a G.L.O. Brass Cap;

THENCE South 89 degrees 53 minutes 38 seconds East, along the North line of the Northwest quarter of said Section 6 a distance of 601.45 feet to the Southwest corner of said Section 32, Township 7 North, Range 2 West, being a G.L.O. Brass Cap;

THENCE South 89 degrees 54 minutes 32 seconds East, continuing along the North line of the Northwest quarter of said Section 6 a distance of 2148.21 feet to the North quarter corner of Section 5, being a G.L.O. Brass Cap;

THENCE North 88 degrees 07 minutes 14 seconds East, along the North line of the Northeast quarter of said Section 6 a distance of 498.87 feet to the South quarter corner of Section 32, Township 7 North, Range 2 West being a G.L.O. Brass Cap;

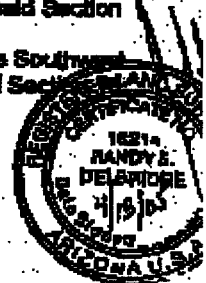
THENCE South 89 degrees 49 minutes 38 seconds East, continuing along the North line of the Northwest quarter of said Section 6 a distance of 2148.08 feet to the Northwest corner of said Section 5, being a G.L.O. Brass Cap;

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Page 2
Total Description

THENCE North 89 degrees 58 minutes 03 seconds East, along the North line of the Northwest quarter of said Section 4 a distance of 487.01 feet to the Southwest corner of Section 23, Township 7 North, Range 2 West, being a G.L.O. Brass Cap;
 THENCE South 89 degrees 57 minutes 12 seconds East, continuing along the North line of the Northwest quarter of said Section 4 a distance of 823.18 feet to the Northwest corner of G.L.O. Lot 4;
 THENCE South 00 degrees 10 minutes 24 seconds East, along the East line of said Lot 4 a distance of 1382.71 feet to the Southwest corner of said Lot 4;
 THENCE North 89 degrees 58 minutes 58 seconds East 2637.17 feet;
 THENCE South 00 degrees 11 minutes 19 seconds East 660.77 feet;
 THENCE North 89 degrees 57 minutes 42 seconds East 669.08 feet;
 THENCE South 00 degrees 11 minutes 52 seconds East 660.42 feet;
 THENCE North 88 degrees 56 minutes 28 seconds East 328.71 feet to the East quarter corner of said Section 4;
 THENCE South 00 degrees 11 minutes 37 seconds West, along the East line of the Southeast quarter of said Section 4 a distance of 2541.22 feet to the Southwest corner of said Section 4, being a G.L.O. Brass Cap;
 THENCE South 00 degrees 02 minutes 31 seconds West, along the East line of the Northeast quarter of said Section 9 a distance of 2638.28 feet to the East quarter corner of said Section 9, being a G.L.O. Brass Cap;
 THENCE South 00 degrees 03 minutes 39 seconds West, along the East line of the Southeast quarter of said Section 9 a distance of 2635.65 feet to the Southwest corner of said Section 9, being a G.L.O. Brass Cap;
 THENCE North 88 degrees 58 minutes 36 seconds West, along the South line of the Southeast quarter of said Section 9 a distance of 2638.79 feet to the South quarter corner of Section 9, being a G.L.O. Brass Cap;
 THENCE North 88 degrees 54 minutes 43 seconds West, along the South line of the Southwest quarter of said Section 9 a distance of 2639.16 feet to the Southwest corner of Section 9, being a G.L.O. Brass Cap;
 THENCE South 00 degrees 10 minutes 03 seconds West, along the East line of the Northeast quarter of said Section 17 a distance of 2637.41 feet to the East quarter corner of said Section 17, being a G.L.O. Brass Cap;
 THENCE South 00 degrees 10 minutes 03 seconds West, along the East line of the Southwest quarter of said Section 17 a distance of 2637.41 feet to the Southwest corner of said Section 17, being a G.L.O. Brass Cap;
 THENCE North 89 degrees 40 minutes 41 seconds West, along the South line of the Southwest quarter of said Section 17 a distance of 2638.22 feet to the South quarter corner of said Section 17, being a G.L.O. Brass Cap;
 THENCE North 89 degrees 54 minutes 18 seconds West, along the South line of the Southwest quarter of said Section 17 a distance of 2640.08 feet to the Southwest corner of Section 17, being a G.L.O. Brass Cap;
 THENCE North 89 degrees 57 minutes 37 seconds West, along the South line of the Southeast quarter of said Section 18 a distance of 2643.12 feet to the South quarter corner of said Section 18, being a G.L.O. Brass Cap;
 THENCE North 88 degrees 58 minutes 11 seconds West, along the South line of the Southwest quarter of said Section 18 a distance of 2514.64 feet to the Southwest corner of said Section 18, being the Point of Beginning.



DECISION NO. 68246

DOCKET NO. W-03510A-05-0145 e

THE SOUTHEAST QUARTER OF SECTION 28
LEGAL DESCRIPTION

THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 8 NORTH, RANGE 3 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 28, MONUMENTED BY A G.L.O. BRASS CAP;

THENCE NORTH 88°59'07" WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, ALSO BEING THE BASIS OF BEARING, A DISTANCE OF 2844.88 FEET TO THE SOUTH QUARTER CORNER OF SECTION 28 MONUMENTED BY A G.L.O. BRASS CAP

THENCE NORTH 00°01'21" WEST ALONG THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 28 A DISTANCE OF 2839.37 FEET TO THE CENTER OF SECTION OF SAID SECTION 28, MONUMENTED BY A REBAR WITH RLS 9087 CAP;

THENCE NORTH 88°58'37" EAST ALONG THE EAST-WEST MID-SECTION LINE A DISTANCE OF 2844.57 FEET TO THE EAST QUARTER CORNER OF SECTION 28, MONUMENTED BY A G.L.O. BRASS CAP;

THENCE SOUTH 00°01'17" EAST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 2841.11 FEET TO THE SOUTHEAST CORNER OF SECTION 28, BEING THE POINT OF BEGINNING;

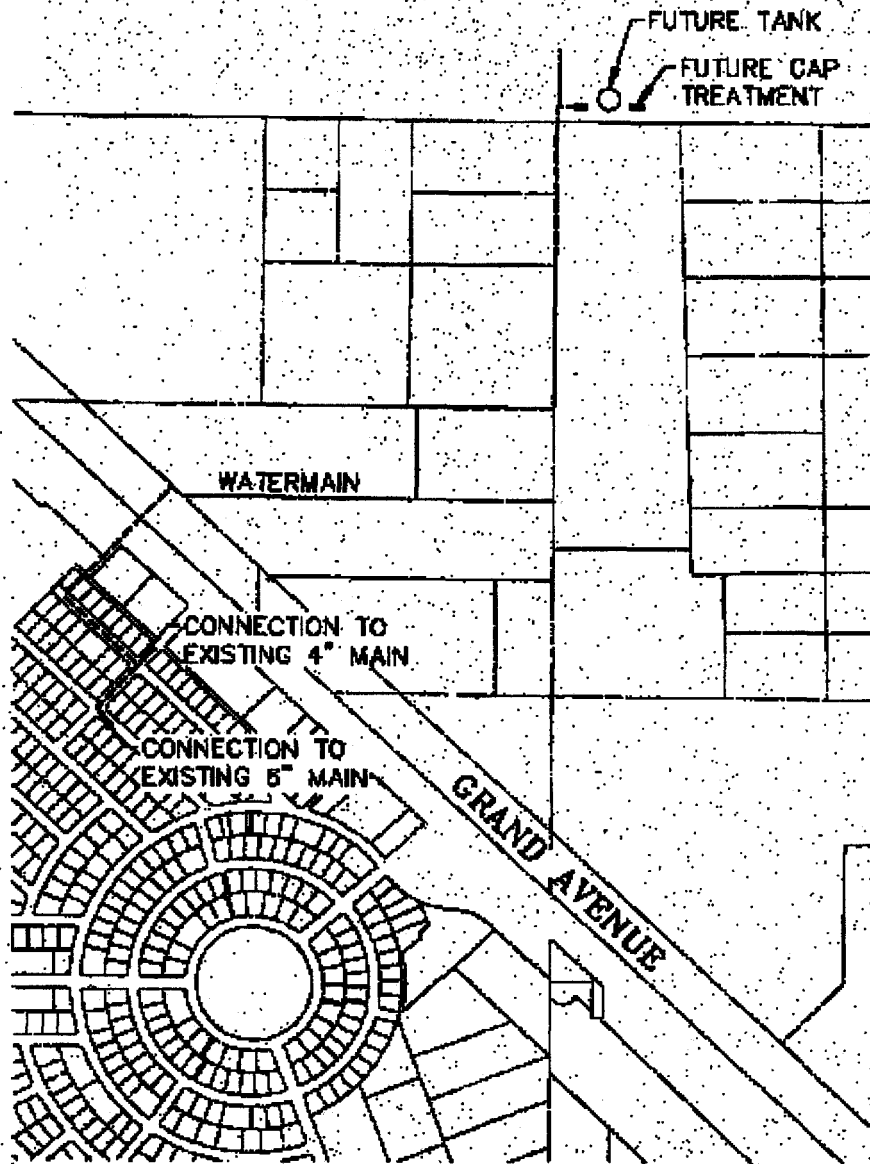
THE ABOVE DESCRIPTION BASED ON AN A.L.T.A SURVEY BY SOUTHWESTERN STATES SURVEYING, INC. DATED JUNE 26, 2004, JOB NUMBER 240894.



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LAKE PLEASANT 5,000/CIRCLE CITY INTERCONNECTION EXHIBIT



SCALE: 1" = 750'



RBF
CONSULTING
PLANNING
DESIGN
CONSTRUCTION

EXHIBIT B

68246

Water Facilities Agreement

This Water Facilities Agreement ("Agreement") entered into this ____ day of ____, 2005, by and between Circle City Water Company, LLC ("Circle City") with primary business offices located at 3101 State Rd., Bakersfield, California 93308 and Harvard Investments, Inc. ("Developer") with its principal mailing address at 17700 N. Pacesetter Way Scottsdale, Arizona 85255 (hereafter collectively referred to as the "Parties"). The Parties contemplate the Developer's construction of on-site and off-site water utility plant necessary to provide domestic service, as further described herein, for Developer's project, Lake Pleasant 5000 ("Development"), which development is more fully described by **Exhibit I** attached hereto.

Section I: Recitals

1. WHEREAS, Circle City is a properly organized Arizona corporation in good standing; and,
2. WHEREAS, Circle City is public service corporation within the meaning of Article XV of the Arizona Constitution; and,
3. WHEREAS, Circle City operates a water utility system subject a Certificate of Convenience and Necessity ("CC&N") by the Arizona Corporation Commission ("ACC"), and also subject to the various joint and several jurisdictions of Arizona Department of Environmental Quality ("ADEQ"), Arizona Department of Water Resources ("ADWR") and other regulatory authorities, not expressly described by this section, which may have jurisdiction over certain aspects of the operations of Circle City; and,
4. WHEREAS, Developer is a private party that has requested, pursuant to its Request for Service letter dated September 30, 2004, that Circle City provide potable domestic water service to the Development, which is outside of its present CC&N. Wastewater utility service will be provided to the Development by a municipality or private utility provider and Developer is in the process of obtaining necessary approvals and agreements for such service; and,
5. WHEREAS, Circle City has accepted Developer's request to provide potable domestic water service to the Development subject to obtaining ACC approval to extend its CC&N to include the Development; and,
6. WHEREAS, Circle City is willing to file an application with the ACC requesting an extension of its CC&N to include the Development, in accordance with **Section VIII** of this Agreement; and
7. WHEREAS, Circle City does not presently operate a water distribution system able to serve potable domestic water to the Development without contemplation of this Agreement; and
8. WHEREAS, Developer is willing to construct facilities, both on-site distribution and off-site water infrastructure utility facilities necessary for Circle City to serve the Development; and
9. WHEREAS, concurrently with the filing to extend its CC&N, Circle City also intends to seek authority from the ACC to collect an Off-Site Hook-Up Fee to fund construction of off-site infrastructure including wells, storage tanks, booster pumps, pressure tanks, transmission mains and/or related appurtenances necessary for proper operation, including engineering and design costs; and
10. WHEREAS, if the ACC approves the proposed Off-Site Hook-Up Fee Tariff in a form materially similar to that proposed by Circle City and attached hereto as **Exhibit II**, Circle City agrees to treat Developer's construction of off-site facilities consistent with that tariff.

NOW, THEREFORE BE IT RESOLVED the Parties to this Agreement do hereby agree as follows:

Section II.: Construction Of On-Site And Off-Site Facilities, Treatment of Costs, Payment of Administrative Costs

1. Developer will construct, or cause to be constructed, on-site distribution facilities sufficient to fully satisfy Developer's requirements for water utility service to the Development by Circle City as further described by this Agreement.
2. Developer will also construct, or cause to be constructed, water infrastructure facilities, including wells, storage tanks, booster pumps, pressure tanks, transmission mains and/or related appurtenances sufficient to fully satisfy Developer's requirements for water utility service to the Development by Circle City as further described by this Agreement. The off-site water infrastructure facilities necessary for Circle City to extend water utility service to the Development are described in the Water Master Plan for Lake Pleasant 5,000 attached hereto as **Exhibit III** and incorporated herein by this reference.
3. Developer shall determine the financing and timing for construction of the on-site and off-site facilities. The cost of the off-site facilities will constitute a credit against any amounts Developer would be obligated to pay under an Off-Site Hook-Up Fee Tariff (**Exhibit II**), if such charge is authorized by the ACC following application made by Circle City as requested by Developer. The estimated cost of the on-site distribution facilities described in **Exhibit III** is Twenty-Four Million, Two Hundred and Sixty Thousand Dollars (\$24,260,000) and shall hereinafter be referred to as the "estimated advance." The estimated cost of the off-site facilities described in **Exhibit III** is Thirty Million, Seven Hundred and Forty Five Thousand, Ninety-Two Dollars (\$30,745,092) and shall hereinafter be referred to as the "estimated off-site hook-up fee credit." To the extent the off-site facilities costs exceed the estimated off-site hook up fee credit, or, if the ACC does not approve the Off-Site Hook-Up Fee Tariff in a form materially similar to that attached as **Exhibit II**, Developer will be responsible to finance the costs of any off-site facilities necessary for Circle City to furnish water utility service to the Development and any such amounts will be treated as non-refundable contributions in aid of construction.
4. Developer agrees that the size, design, type and quality of materials used to construct the on-site distribution facilities and off-site water infrastructure facilities (collectively, the on-site and off-site facilities are referred to at times herein as the "Improvements") , as well as the location of those facilities upon and under the ground, shall be approved by Circle City prior to the commencement of construction and that those facilities shall be designed and constructed in accordance with all applicable standards of Circle City, ADEQ, ACC and any other governmental agencies exercising jurisdiction over the design and construction of water utilities systems. The total cost estimates for the Improvements are more fully described in **Exhibit IV**. All plans and specifications shall be submitted to Circle City prior to submission for approval by any regulatory agencies and Circle City shall have thirty (30) days within which to revise or approve the plans. If Circle City does not provide comments within that thirty-day period, the plans and specifications will be deemed approved by Circle City. Circle City shall have the right to require certain configurations that meet prudent utility practice and general industry practice, to participate in design review and design verification activities, pre- and post-construction inspection requirements, commissioning requirements, test and trials (design validation), and to prescribe certain equipment over other equipment, provided, however, Circle City cannot require changes to the configuration, design or equipment after approval of the plans and specifications.
5. In addition to the estimated advance and estimated off-site hook-up fee credit, Developer shall additionally pay to Circle City an amount sufficient to pay for reasonable administrative costs, including accounting, engineering and inspection services in connection with the construction of the

on-site and off-site facilities, and verifiable legal expenses for the preparation of this Agreement, request for expansion of its CC&N and approval of an off-site hook-up fee. Circle City shall, upon request, provide proof of such costs to Developer prior to reimbursement by Developer of any such costs incurred by Circle City. Developer shall also reimburse Circle City for its reasonable pecuniary costs incurred in the management, supervision and inspection of Improvements.

- 6 All funds payable pursuant to this Agreement, including any adjustments thereto, shall be paid by Developer to Circle City in the form of certified cashiers check or personal check or other means agreed by the Parties, the validity of which shall be determined only after satisfaction of same by the financial institution upon which it is drawn.
- 7 If, for any reason, any balance remains unpaid by Developer, Circle City shall be paid by Developer prior to Circle City's acceptance of transfer of the on-site and off-site facilities, **DEVELOPER ACKNOWLEDGES AND AGREES THAT IT IS THE EXPRESSED PURPOSE OF THIS SECTION NOT TO PERMIT THE EXTENSION OF SERVICE BY CIRCLE CITY TO ANY LOT OR CUSTOMER IN THE DEVELOPMENT UNTIL ALL AMOUNTS BEING FULLY PAID WHICH WERE INCURRED IN CONNECTION WITH THIS AGREEMENT.**

Section III: Conditions of Facilities Construction

1. The acceptance by Circle City of any conveyance of the Improvements to be constructed by Developer, as referenced in **Exhibit III** and **Exhibit IV** respectively, are further conditioned upon Developer's acceptance of each of the following conditions:
 - a) That Developer connect at least one (1) water service connection to the property described in **Exhibit I**, except as may otherwise be expressly provided by this Agreement.
 - b) That prior to the commencement of construction of any Improvements, all permits, approvals, licenses and easements required in connection with any on-site and/or off-site facilities shall be obtained, recorded, transferred or otherwise developed by Developer retaining the right to ultimately transfer all such permits, approvals, licenses and easements in to Circle City so as to completely satisfy all authorities having jurisdiction over regulation or approval of any on-site and/or off-site facilities.
 - c) That all easements and rights-of-way shall be free of obstacles which may interfere with construction or subsequent operation of any Improvements contemplated by this Agreement, as exclusively determined by Circle City. If facilities require road, pavement and/or concrete construction, all such development shall be constructed at grade elevations. No pavement or curbs shall be installed prior to completion of any Improvements contemplated by this Agreement or otherwise approved in advance of construction by Circle City. If any streets, roads, alleys, or drainage ways are not constructed in accordance with this section, Developer shall bear all costs of every type and description, on a non-refundable basis, that are incurred by Developer or Circle City to relocate facilities as a result of said facilities not being constructed in accordance with this section.
 - d) That no engineering changes be made, caused, required or incurred by Developer in connection with any utility construction standards, any regulatory authority or any State or County health department, or any other public agency under whose jurisdiction the construction of the facilities contemplated under this Agreement may be deemed appropriate, without the advance written approval of Circle City, which approval shall not be unreasonably withheld.

- e) That Developer comply with any additional terms and conditions as may be set forth in other sections of this Agreement, which may be attached hereto and incorporated by reference for all purposes.

Section IV: Service, Circle City Liability Limitations

1. Notwithstanding any reference to fire protection facilities contained in this Agreement, the Improvements are being constructed by Developer and will be transferred to Circle City for the purpose of providing domestic water service to the Development. However, under certain operating conditions as exclusively determined by Circle City, the Improvements may be used, with the prior written approval of Circle City, to provide limited emergency fire protection service to an official fire protection agency which has previously contracted with Circle City for such service.
2. It is understood by Developer, as evidenced by the execution of this Agreement, that Circle City does not have the responsibility to provide, and shall not construct under this Agreement, facilities capable of providing any fire flow to the Improvements. Therefore, it is expressly agreed and understood by Developer that **CIRCLE CITY DOES NOT GUARANTEE OR ENSURE UNINTERRUPTED OR REGULAR WATER SERVICE; NOR DOES CIRCLE CITY REPRESENT THE AVAILABILITY OF ADEQUATE PRESSURE, VOLUME OR FIRE FLOW FROM THE SYSTEM BY OFFERING DOMESTIC WATER SERVICE PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION SECTION XI, PARAGRAPH 16.**
3. It is agreed that in the event that service from a fire hydrant, or an interior fire sprinkler system which is used for non-fire protection purposes, is interrupted or is irregular or defective or fails from causes beyond Circle City's control, or through the negligence or alleged negligence of its employees, services, agents or other representatives, Circle City shall not be liable for any injuries or damages arising therefrom. Further, Circle City shall have neither the responsibility nor the liability for any use or disposition of fire hydrant or fire protection water, even if such use or disposition is attributable, or is alleged to be attributable to the negligence of Circle City's employees, agents, servants, or other representatives. Developer, or any other person or entity which succeeds to Developer's interest, REGARDLESS OF WHETHER SUCH PERSON OR ENTITY HAS KNOWLEDGE OR NOTICE OF THESE TERMS, shall make no claim against Circle City for any such loss or damage resulting from services provided under this Agreement or the applicable service tariff. Circle City shall be entitled to recover its reasonable attorney's fees should Developer fail to properly comply with this provision.

Section V: Rates and Tariffs

1. It is understood and agreed by Developer, as evidenced by its execution of this Agreement, that all charges for domestic water services to the Development shall, at all times, be at then applicable tariffs of Circle City as established by the ACC, including an Off-Site Hook-Up Fee Tariff if approved by the ACC, which approval will be sought by Circle City concurrent with its request to extend its CC&N to include the Development. Circle City's tariffs are subject to change from time to time upon application by Circle City and as approved by the Commission.

Section VI: Permits and Licenses, Easements, Title

1. Circle City and Developer agree to obtain all permits and licenses from all authorities having jurisdiction which may be required for the construction of any of the Improvements necessary for Circle City to provide water utility service to the Development.
2. Prior to the commencement of construction any Improvements, Developer shall, if applicable, obtain from the owners of any property upon which on-site and/or off-site facilities are to be constructed, a

perpetual private water utility easement for construction, operation and maintenance of the Improvements on the behalf of, and in the name of, Circle City and in a form acceptable to Circle City.

3. All materials, facilities constructed, and water supply equipment provided in connection with construction of any Improvements under this Agreement and the completed facilities as installed shall be transferred by bill of sale and/or any other necessary conveyance document to Circle City, and thereafter shall become the sole and exclusive property of Circle City, and full legal and equitable title thereto shall be completely and fully vested in Circle City, free and clear of any liens. Developer agrees to execute or caused to be executed promptly all such documents as Circle City or its representatives may request to evidence good and merchantable title to said Improvements free and clear of all liens.

Section VII: Advance Amount, Refund, Transfer

1. As described by this Agreement, all advances for on-site distribution facilities shall be made by Developer as specified hereunder. If the actual costs of on-site distribution facilities are revised, in accordance with this Agreement, the additional advance shall be applied thereto and/or adjusted by the same amount.
2. All costs of on-site distribution facilities advanced hereunder and applicable administrative, legal, accounting, engineering, inspection and other pecuniary costs for supervision and management shall be refunded in accordance with A.A.C. § R14-2-406(D) – 10% of all revenue generated by customers within the Development each year for 20 years beginning with the commencement of water utility service within the Development. Under no circumstance shall Developer be entitled to, or receive, any amount in excess of the actual costs of on-site distribution facilities and applicable administrative, legal and engineering costs, nor shall Developer receive any refund from Circle City of any amounts paid for off-site facilities, whether such amounts are paid pursuant to an ACC-approved Off-Site Hook-Up Fee tariff or otherwise.
3. Subject to Appendix 1, attached hereto, the costs to be paid by Developer hereunder for any Improvements do not include any amount necessary for the payment of State or federal income taxes in connection therewith, which amounts shall be the responsibility of Developer should such income tax liabilities be imposed on Circle City at a later date as a result of the payment of any amounts and/or the conveyance of any facilities by Developer to Circle City under the Agreement.
4. Developer understands, acknowledges and agrees, as evidenced by its execution of this Agreement, that it is solely responsible to notify Circle City of any change of address used in connection with any provision hereunder. All changes of address of Developer should be forwarded in writing to Circle City's offices as first set forth above.
5. In the event of the sale, conveyance or transfer by Circle City, pursuant to the approval of the Regulatory Authorities, of any portion of its water system, including the facilities serving the Development and installed pursuant to the terms of this Agreement, Circle City's obligations under this Agreement shall cease (except to any payment which may be then due) conditioned upon the transferee assuming, and agreeing to pay Developer, any sums payable to Developer thereafter in accordance with any provisions of this Agreement.

Section VIII: Extension of Circle City's CC&N

1. Circle City hereby agrees to file an application with the ACC for the expansion of its CC&N to include the Development as well as a request for authority to collect an Off-Site Hook-Up Fee under the form of tariff represented in Exhibit II.
2. All obligations under this Agreement shall be conditioned upon Circle City gaining authority, free from any unreasonable condition, from the ACC to include the Development in Circle City's

certificated service area. Further, Developer covenants and agrees to support Circle City's application to extend its CC&N and for approval of an Off-Site Hook-Up Fee Tariff, and shall, upon request by Circle City and/or its assigns, provide testimony and/or public comment supporting Circle City's application in connection with any proceeding before the ACC. In the event the ACC does not grant Circle City's request for a CC&N extension, Circle City's and Developer's obligations under this Agreement will terminate, except that Developer will still be responsible to reimburse Circle City for its reasonable and verifiable administrative, accounting, legal, engineering, inspection and other similar costs incurred under this Agreement prior to its termination under this provision.

Section IX: General Conditions

1. Each of the recitals set forth in Section 1 above are hereby incorporated into this Agreement by this reference as if fully set forth herein. This Agreement may not be modified or amended except by a writing signed by both parties. The remedies provided for in this Agreement shall not be deemed either Parties' exclusive remedies but shall be in addition all other remedies available to Circle City at law or equity. No waiver by Circle City of any breach by Developer of any provision of this Agreement shall in any way be construed as a waiver of any future or subsequent breach by Developer or bar the right of Circle City to insist on strict performance by Developer of the provisions in this Agreement in the future. Developer is an independent party and not an agent or employee of Circle City.
2. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and representatives; provided, however, that no assignment or transfer of any of the obligations, powers, duties or rights created in the obligee or assignee by this Agreement shall be binding upon any of the Parties to this Agreement until such assignment or transfer is approved in writing by each of the Parties hereto.
3. If any suit or other action or proceeding is brought to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonably attorneys' fees and costs, such amounts as may be established by a court and not a jury.
4. This Agreement embodies the entire agreement between the Parties and supersedes all prior and contemporaneous oral or written agreements, representations and understandings, if any, relating to the subject matter hereof which shall hereby be superseded and merged. All documents attached to this Agreement shall be read and interpreted as consistent with one another.
5. Section headings are for the convenience of reference only and shall in no way affect the interpretation of this Agreement. This Agreement is the result of good faith negotiations between the Parties and, accordingly, shall not be construed for or against either Party regardless of which Party drafted this Agreement or any portion thereof.
6. Developer does not intend the benefits of this Agreement to inure to any third party, nor shall this Agreement be construed to make or render Circle City liable to any creditor, materialman, supplier, tax collector, contractor, subcontractor, broker, purchaser or lessee of the Improvements.
7. Each Party shall execute and deliver all such documents and perform all such acts as reasonably requested by any party from time to time to perform the duties and obligations contemplated by this Agreement.
8. All annexes, schedules and exhibits attached hereto are hereby incorporated into this Agreement by each reference thereto as if fully set forth at each reference.
9. Each Party acknowledges and warrants that it is fully authorized and empowered to execute this Agreement by and through the individuals executing below.

10. Any notices or communication required or permitted to be given to any of the Parties to this Agreement must be in writing and shall be effective upon the earlier of (a) the date when received by such party, or (b) the date which is three (3) days after mailing, postage prepaid, by certified or registered mail, return receipt requested, to the address of such party as indicated below, or (c) by telefacsimile delivered or transmitted to the party to whom such notice is required or directed in accordance with that information first set forth above. Any such notices to be personally delivered may be delivered to the principal offices or location of the other party to whom such notice is directed. Any such notice shall be deemed to have been given (whether actually received or not) on the day it is personally delivered as aforesaid. Any party to this Agreement may change its address or delivery location by giving notice to the other party pursuant to this section.
11. Time is of the essence with regard to each provision of this Agreement as to which time is a factor. If this Agreement provides that any time period expires or date for performance specified in this Agreement falls on a non-business day (i.e. Saturday, Sunday or legal holiday recognized by the State of Arizona), such time period or performance deadline shall be extended to the next business day.
12. This Agreement has been prepared, is being executed and delivered, and is intended to be performed in the State of Arizona. The substantive laws of the State of Arizona and the applicable federal laws of the United States of America shall govern the validity, construction, enforcement and interpretation of this Agreement and all documents related hereto without regard to conflict of the law rules.
13. The Parties hereto agree to do all such things and take all such action, and to make, execute and deliver such documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.
14. This Agreement may be executed in multiple counterparts, each of which, when so executed shall be deemed an original but all such counterparts shall constitute but one and the same Agreement.
16. **Developer acknowledges that the on-site and certain off-site water infrastructure facilities are being installed for the purpose of providing domestic water service to the Development, which is further described in Exhibit I. Under certain operating conditions, the facilities may provide limited fire protection service to appropriate fire protection agencies contracting with the Circle City for such service. However, it is expressly understood by the Circle City and the Developer that Circle City will provide a minimum delivery pressure of 20 pound per square inch at the customer's meter or point of delivery in accordance with A.A.C. R14-2-407.E, but that Circle City does not guarantee or ensure uninterrupted or regular fire protection service. Developer further acknowledges that Circle City does not represent or warrant that the domestic water utility service provided by Circle City meets any rules, regulations or other standards for fire protection imposed by any governmental entity; nor does Circle City accept or assume any obligation of Developer, whether express or implied, pertaining to the property described in Exhibit I including, without limitation, assurances of water for fire protection purposes, except as expressly set forth in this Agreement.**
17. Developer, if actually defined to represent more than a single individual, shall be jointly and severally liable for all duties and obligations under this Agreement.

Section X: Acceptance

IN WITNESS HEREOF, the Parties do hereby agree to the foregoing covenants, terms and conditions of the Agreement dated as first set forth above.

LAKE PLEASANT 5000, L.L.C., an Arizona limited liability company

By: Harvard 5K, L.L.C, an Arizona limited liability company

Its: Manager

By: Harvard Investments, Inc., a Nevada corporation

Its: Manager

By: 

Its: _____

For: Circle City Water Co. L.L.C.

By:

Its:

Robert T. Hardcastle

Managing Member

Section X: Acceptance

IN WITNESS HEREOF, the Parties do hereby agree to the foregoing covenants, terms and conditions of the Agreement dated as first set forth above.

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Its: Manager

By: Harvard Investments, Inc., a Nevada corporation

Its: Manager

By: _____
Its: _____

For: Circle City Water Co. L.L.C.

By:

Its:

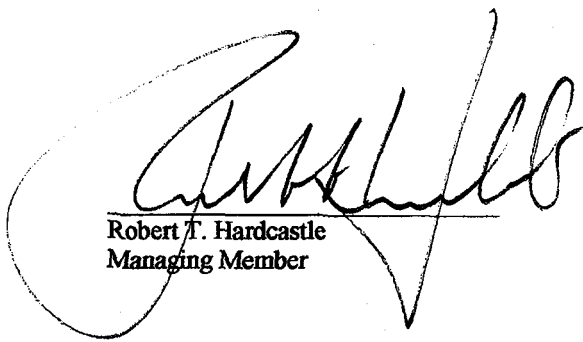

Robert T. Hardcastle
Managing Member

Exhibit I

Vicinity Map and Legal Description

Legal Description:

4,882 acres

Phase II
LP 5000

PARCEL NO. 1:

The Southeast quarter; and

The Southeast quarter of the Southwest quarter of Section 4, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2:

All of Section 9, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3:

The East half of the Northeast quarter; and

The East half of the Southeast quarter of Section 17, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4:

Lot 4; and

The Southwest quarter of the Northeast quarter; and

The Southwest quarter of the Southeast quarter of the Northeast quarter; and

The West half of the Southeast quarter of the Southeast quarter of the Northeast quarter; and

The South half of the Northwest quarter; and

The South half of Section 4, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Southeast quarter; and also

EXCEPT the Southeast quarter of the Southwest quarter.

PARCEL NO. 5:

The Southeast quarter of the Northeast quarter of Section 5, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 6:

A.

Lots 4 and 5 of Section 6, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 7:

The South half of the Northeast quarter; and

The Southeast quarter of the Northwest quarter; and

The South half of Section 6, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT Lots 6 and 7.

PARCEL NO. 8:

All of Section 7, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9:

The Northwest quarter of the Northwest quarter of Section 8, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10:

All of Section 17, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the East half of the Northeast quarter and the East half of the Southwest quarter of Section 17, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 11:

All of Section 18, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northeast quarter of the Northeast quarter thereof.

PARCEL NO. 12:

The South half of Section 5, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 13:

Section 8, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian,
Maricopa County, Arizona;

EXCEPT the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 14:

The North half of Section 5, Township 6 North, Range 2 West of the Gila and Salt River Base
and Meridian, Maricopa County, Arizona;

EXCEPT the Southeast quarter of the Northeast quarter of said Section 5; and also

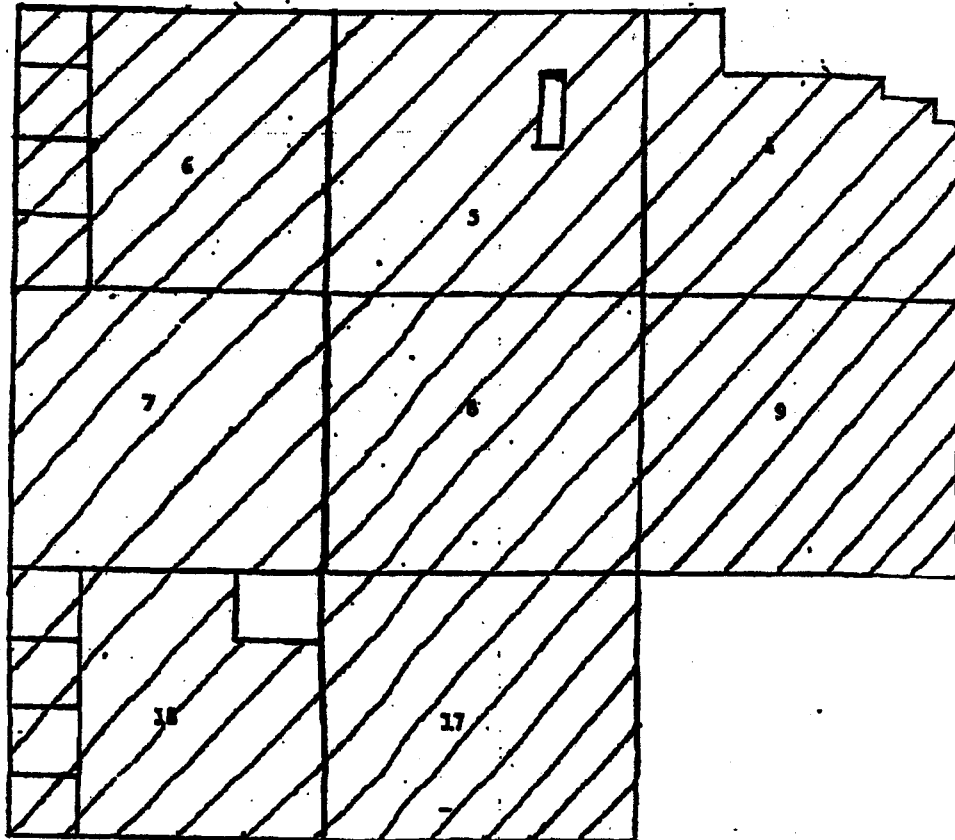
EXCEPT the East half of the East half of the Southwest quarter of the Northeast quarter of
said Section 5.

PARCEL NO. 15:

Governmental Lots 1, 2, 3, 6 and 7, Section 8, Township 6 North, Range 2 West of the Gila
and Salt River Base and Meridian, Maricopa County, Arizona.

EXHIBIT "A"

**Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian,
Maricopa County, Arizona.**



160 acres

EXHIBIT "A"

Legal Description of Property

Parcel 1:

The Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the North 210.00 feet of the South 2090.00 feet of the West 210.00 feet of the East 910.00 feet.

Parcel 2:

The North 210.00 feet of the South 2090.00 feet of the West 210.00 feet of the East 910.00 feet of the Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

*Phase I
Worrish 160*

Exhibit II

PROPOSED OFF-SITE HOOK-UP FEE TARIFF

TARIFF SCHEDULE

UTILITY: CIRCLE CITY WATER COMPANY

SHEET NO. 1

DOCKET NO. W-

DECISION NO. _____ (_____, 2005)

EFFECTIVE DATE:

OFF-SITE HOOK-UP FEE

I. Purpose and Applicability.

The purpose of the off-site hook-up fees payable to Circle City Water Company ("the Company") pursuant to this tariff is to equitably apportion the costs of constructing additional off-site facilities to provide water production, delivery, storage and pressure among all new service connections. These charges are applicable to all new service connections established after the effective date of this tariff. The charges are one-time charges and are payable as a condition to Company's establishment of service, as more particularly provided below.

II. Definitions.

Unless the context otherwise requires, the definitions set forth in R-14-2-401 of the Arizona Corporation Commission's ("Commission") rules and regulations governing water utilities shall apply in interpreting this tariff schedule.

"Applicant" means any party entering into an agreement with Company for the installation of water facilities to serve new service connections, and may include Developers and/or Builders of new residential subdivisions.

"Company" means Circle City Water Company, LLC, an Arizona limited liability company.

"Main Extension Agreement" means any agreement whereby an Applicant, Developer and/or Builder agrees to advance the costs of the installation of water facilities to the Company to serve new service connections, or install water facilities to serve new service connections and transfer ownership of such water facilities to the Company, which agreement shall require the approval of the Commission pursuant to A.A.C. R14-2-406, and shall have the same meaning as "Water Facilities Agreement" or "Line Extension Agreement."

"Off-Site Facilities" means wells, storage tanks and related appurtenances necessary for proper operation, including engineering and design costs. Off-Site facilities may also include booster pumps, pressure tanks, transmission mains and related appurtenances necessary for proper operation, if these facilities are not for the exclusive use of the applicant and will benefit the entire water system.

“Service Connection” means and includes all service connections for single-family residential or other uses, regardless of meter size.

III. Off-Site Hook-Up Fee.

For each new service connection, the Company shall collect an off-site hook-up fee derived from the following table:

OFF-SITE HOOK-UP FEE TABLE		
Meter Size	Size Factor	Total Fee
5/8" x 3/4 "	1	\$3,000.00
3/4"	1.2	\$3,000.00
1"	2	\$7,500.00
1- 1/2 "	4	\$15,000.00
2"	6.4	\$24,000.00
3"	12	\$48,000.00
4"	20	\$75,000.00
6" or larger	40	\$150,000.00

IV. Terms and Conditions.

(A) Assessment of One Time Off-Site Hook-Up Fee: The off-site hook-up fee may be assessed only once per parcel, service connection, or lot within a subdivision (similar to meter and service line installation charge).

(B) Use of Off-Site Hook-Up Fees: Off-site hook-up fees may only be used to pay for capital items of off-site facilities, or for repayment of loans obtained for installation of off-site facilities. Off-site hook-up fees shall not be used for repairs, maintenance, or operational purposes.

(C) Time of Payment:

a. For those requiring a Main Extension Agreement –

In the event that the person or entity that will be constructing improvements (“Applicant”, “Developer” or “Builder”) is otherwise required to enter into a Main Extension Agreement, whereby the Applicant, Developer or Builder agrees to advance the costs of installing mains, valves, fittings, hydrants and other on-site improvements in order to extend service in accordance with R-14-2-406 (B), payment of the fees required hereunder shall be made by the Applicant, Developer or Builder

no later than within 15 calendar days after receipt of notification from the Company that the Utilities Division of the Arizona Corporation Commission has approved the Main Extension Agreement in accordance with R14-2-406(M).

- b. For those connecting to an existing main that was installed pursuant to a Main Extension Agreement that was approved by the Arizona Corporation Commission –

In the event that the Applicant, Developer or Builder for service is not required to enter into a Main Extension Agreement, the charges hereunder shall be due and payable at the time the meter and service line installation fee is due and payable.

(D) Off-Site Facilities Construction By Developer: Company and Applicant, Developer or Builder may agree to construction of off-site facilities necessary to serve a particular development by Applicant, Developer or Builder, which facilities are then conveyed to Company. In that event, Company shall credit the total cost of such off-site facilities as an off-set to off-site hook-up fees due under this Tariff. If the total cost of the off-site facilities constructed by Applicant, Developer or Builder and conveyed to Company is less than the applicable off-site hook-up fees under this Tariff, Applicant, Developer or Builder shall pay the remaining amount of off-site hook-up fees owed hereunder. If the total cost of the off-site facilities constructed by Applicant, Developer or Builder and conveyed to Company is more than the applicable off-site hook-up fees under this Tariff, Applicant, Developer or Builder shall not be entitled to any refunds.

(E) Failure to Pay Charges; Delinquent Payments: The Company will not be obligated to provide water service to any Developer or , Builder or other applicant for service in the event that the Developer, Builder or other applicant for service has not paid in full all charges hereunder. Under no circumstances will the Company set a meter or otherwise allow service to be established if the entire amount of any payment has not been paid.

(F) Large Subdivision Projects: In the event that the Developer or Builder is engaged in the development of a residential subdivision containing more than 150 lots, the Company may, in its discretion, agree to payment of off-site hook-up fees in installments. Such installments may be based on the residential subdivision development's phasing, and should attempt to equitably apportion the payment of charges hereunder based on the Developer's or Builder's construction schedule and water service requirements.

(G) Off-Site Hook-Up Fees Non-refundable: The amounts collected by the Company pursuant to this Off-Site Hook-Up Fee Tariff shall be non-refundable contributions in aid of construction.

(H) Use of Off-Site Hook-Up Fees Received: All funds collected by the Company as off-site hook-up fees shall be deposited into a separate interest bearing trust account and used solely for the purposes of paying for the costs of off-site facilities, including repayment of loans obtained for the installation of off-site facilities that will benefit the entire water system.

(I) Off-Site Hook-Up Fee in Addition to On-Site Facilities: The off-site hook-up fee shall be in addition to any costs associated with the construction of on-site facilities under a Main Extension Agreement.

(J) Disposition of Excess Funds: After all necessary and desirable off-site facilities are constructed utilizing funds collected pursuant to the off-site hook-up fees, or if the off-site hook-up fee has been terminated by order of the Arizona Corporation Commission, any funds remaining in the trust shall be refunded. The manner of the refund shall be determined by the Commission at the time a refund becomes necessary.

(K) Fire Flow Requirements: In the event the applicant for service has fire flow requirements that require additional facilities beyond those facilities whose costs were included in the off-site hook-up fee, and which are contemplated to be constructed using the proceeds of the off-site hook-up fee, the Company may require the applicant to install such additional facilities as are required to meet those additional fire flow requirements, as a non-refundable contribution, in addition to the off-site hook-up fee.

Effective Date: _____

Approved for Filing in Compliance with
Decision No. _____

Exhibit III

Water Master Plan for Lake Pleasant 5000

Water Master Plan

for

Lake Pleasant 5,000

Original Report Date: December 8, 2004

Revised Report Date: January 4, 2005

Prepared For:

Harvard Investments
17700 North Pacesetter Way
Scottsdale, Arizona 85255
Phone: 480-348-1118
Fax: 480-348-8976



Prepared By:

Scott M. Larson P.E.
J. Ryan Christensen P.E.



16605 North 28th Avenue, Suite 100
Phoenix, AZ 85053-7550
Phone: 602-467-2200
Fax: 602-467-2201

JN: 45-101888

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Abbreviations

ac	Acres
ADEQ	Arizona Department of Environmental Quality
ADWR	Arizona Department of Water Resources
AWWA	American Water Works Association
DU	Dwelling Units
EDU	Equivalent Dwelling Units
gal	Gallons
gpcpd	Gallons Per Capita Per Day
gpd	Gallons Per Day
gpm	Gallons Per Minute
LF	Linear Feet
MAG	Maricopa Association of Governments
MDR	Medium Density Residential (single family housing)
MF	Multiple Family
MG	Million Gallons
MGD	Million Gallons Per Day
n	Manning's Roughness
psi	Pounds Per Square Inch

1.0 Introduction

1.1 General Description

The proposed Lake Pleasant 5,000 development covers approximately 4,882 acres within Maricopa County. The proposed development is located within the City of Surprise General Plan area, and is anticipated to consist of approximately 10,000 residential dwelling units and 300 acres of commercial development. The general site location can be seen in Figure 1 Lake Pleasant 5,000 Vicinity Map.

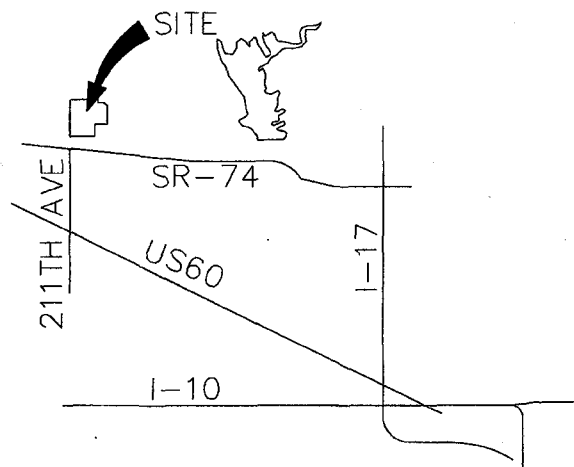


Figure 1 Lake Pleasant 5,000 Vicinity Map

1.2 Project Location

The Lake Pleasant 5,000 development includes sections 5, 6, 7, 8, 9, 17 and 18 as well as a majority portion of Section 4 in Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. The site is located north of SR 74, south of the Maricopa County line, and east of the 211th Ave alignment.

1.3 Topographic Conditions

The Lake Pleasant 5000 development consists of undeveloped desert land. The northern and northeast portions of the site are dominated by mountainous terrain, while the eastern third of the site is fairly flat sloping from north to south at approximately a 3% grade.

1.4 Scope of Study

The purpose of this study is to provide a conceptual discussion of the water infrastructure necessary to serve the proposed Lake Pleasant 5,000 development. This study will discuss the potable water facilities required to serve the project. Storage, supply, and demands associated with the proposed development will be addressed. It is important to note, that the onsite distribution lines are not addressed within this study.

2.0 Distribution System

2.1 Pressure Zone Description

The proposed Lake Pleasant 5,000 development is anticipated to consist of five pressure zones. The pressure zone boundaries will be set at approximately 120-foot intervals. The anticipated pressure zones for the site are outlined in Table 1 Lake Pleasant 5,000 Pressure Zones. An exhibit showing the pressure zone boundaries is included in Appendix A Pressure Zone Map.

Table 1 Lake Pleasant 5,000 Pressure Zones

Zone	Low Contour	High Contour
P1	2,080	2,200
P2	2,200	2,320
P3	2,320	2,440
P4	2,440	2,560
P5	2,560	2,680

3.0 Projected System Demands

3.1 General

The Lake Pleasant 5,000 development is anticipated to consist of 10,000 dwelling units. The average day demands for the site were determined based on the projected number of residential dwelling units and the projected amount of commercial acreage. The projected population for the residential area was calculated by multiplying the number of dwelling units, by a population density of 3.2 people per dwelling unit (ppdu). The water demand for the site was calculated by multiplying the projected population by the new residential demand factors from the Arizona Department of Water Resources (ADWR) Third Management Plan for the Phoenix Active Management Area (AMA). These factors consist of an interior water demand of 57 gpcd and an exterior water demand of 178 gallons per dwelling unit. In order to maintain these demand factors, it was assumed that the residential turf areas would be limited to 900 ft², as defined by ADWR's Third Management Plan, and that other conservation measures identified in the Third Management Plan would be followed. A commercial demand of 2,000 gallons per acre was also used in these calculations. The demand factors used for this project are summarized in Table 2 Water Demand Factors.

Table 2 Water Demand Factors

Type	Demand	Unit
Residential Interior	57	gpcd
Residential Exterior	178	gal/du/day
Commercial	2,000	gal/acre/day

Peaking factors for the maximum day and peak hour demands were estimated for the proposed Lake Pleasant 5,000 development. A maximum day peaking factor of 1.8 times the average day demand was assumed. While a peak hour peaking factor of 3.0 times the average day demand was assumed. The projected average day, maximum day, and peak hour demands are shown in Table 3 Lake Pleasant 5,000 Water Demands.

Table 3 Lake Pleasant 5,000 Water Demands

Avg Day		Max Day		Peak Hour	
(gpd)	(gpm)	(gpd)	(gpm)	(gpd)	(gpm)
4,204,000	2,919	7,567,200	5,255	12,612,000	8,758

It is important to note that water demands for the irrigation of the proposed golf courses have not been included within these calculations. The golf courses are planned to be irrigated through reclaimed water. Additionally, changes to the number of dwelling units, projected land uses, and varying individual water usage patterns could result in either an increase or decrease in actual water demand.

3.2 Fire Flow Demand

The proposed Lake Pleasant 5,000 water system will be capable of providing sufficient fire flow throughout the development. The required fire flow will depend on the land use in each area, but is anticipated to range from a minimum of 1,000 gpm within the residential areas up to 3,000 gpm within the commercial areas.

4.0 Water Storage

The volume of water storage to be included within the site has been calculated to provide a reliable water system. Sufficient water storage is projected to be stored on site in order to meet the maximum day water demand. The water storage volume projected for the proposed Lake Pleasant 5,000 development is a total of 7.6 million gallons. It is anticipated that this storage would be provided through two 2.30 million gallon tanks and two 1.50 million gallon tanks. The location of the water storage reservoirs throughout the site will be determined at a future time.

Additionally, one 500,000 gallon storage tank is anticipated to be constructed at the well field. This tank will be used to help reduce cycling of the well pumps and to provide temporary storage before boosting the water to the site.

4.1 Booster Pump Capacity

The onsite booster pump capacity has been calculated for the proposed Lake Pleasant 5,000 development. Sufficient booster pumping capacity will be provided in order to meet the peak hour water system demands, while maintaining one backup booster pump. A peak hour demand of 8,758 gpm has been calculated for the development as described in Section 3.0, Projected System Demands. It is anticipated, that 10,350 gpm of booster capacity will be provided for the onsite water distribution system. Due to the amount of elevation change throughout the site, it may be possible to reduce the amount of booster pump capacity by supplying a portion of the site through gravity.

In addition to the booster pump capacity for the on site distribution system, it will also be necessary to construct a booster pump station to bring the water supply from the Central Arizona Project canal (CAP) to the Circle City Water Company, and another booster station to bring the water supply from the Circle City Water Company to the project site. It is anticipated that each of these stations will be capable of meeting the maximum day demand of 5,255 gpm, while maintaining one backup booster pump. Each of these booster stations is projected to have a capacity of 6,650 gpm. A greater discussion of the water supply for the project is provided in Section 5.0, Water Supply.

5.0 Water Supply

The water supply for the proposed Lake Pleasant 5,000 development is anticipated to come from a combination of groundwater wells and (CAP) surface water supply. It is anticipated that sufficient groundwater wells will be provided to meet the average day demand of 2,919 gpm. In addition, surface water supplies will be provided to meet the total maximum day demand of 5,255 gpm. The groundwater wells will serve as a backup supply for the development.

The Circle City Water Company service area will be expanded to include a well field. This well field is anticipated to be located in a portion of Section 28 of Township 6 North, Range 3 West. The groundwater wells to supply this project are anticipated to be located within the proposed well field as well as the existing Circle City Water Company service area. Assuming that each well will produce 320 gpm, 11 wells will be required to meet the average day demand of the project, while maintaining one backup well. The actual number of groundwater wells will depend on the production capacity of each well.

It will be necessary to construct booster stations and transmission mains in order to convey the water from the CAP to the Circle City Water Company service area, and from the Circle City Water Company to the project site. Two 24-inch transmission mains are anticipated to be required. Details on these transmission mains are summarized in Table 4 Transmission Main Details. An exhibit showing the location of the Circle City Water Company, the proposed well field, conceptual alignments of the proposed transmission mains, and project site is provided in Appendix B Proposed Transmission Mains.

Table 4 Transmission Main Details

Start	End	Length (ft)	Diam (in)	Start Elev	End Elev
CAP	Circle City Water Co	44,000	24	1,550	1,910
Circle City Water Co	Lake Pleasant 5,000	47,000	24	1,910	2,300

6.0 Opinion of Probable Costs

An engineer's opinion of probable costs has been developed for this project. These costs are based on the engineer's experience with the construction industry, and should be used for planning purposes only. The costs have been developed for the wells, tanks, transmission lines, and booster stations, the onsite distribution lines have not been included as part of this analysis.

Opinion of Probable Cost for Pipes, Wells, Tanks & Booster Station
10,000 Units

Description	Average Unit Cost	Unit	QTY	Total
Well Drilling	\$ 175,000	EA	11	\$ 1,925,000
Well Equipping (pump & motor, well head and column pipe, discharge piping and valves, etc.)	\$ 110,000	EA	11	\$ 1,210,000
6-Foot Block Wall	\$ 100	LF	9,075	\$ 907,500
Well Site Foundation Pads	\$ 7,250	EA	11	\$ 79,750
Well Electrical	\$ 55,000	EA	11	\$ 605,000
Well Controls	\$ 45,000	EA	11	\$ 495,000
Well Generator	\$ 50,000	EA	2	\$ 100,000
Well(s) Subtotal				\$ 5,322,250
CAP Water Treatment (1.0 MGD per unit)	\$ 500,000	EA	8	\$ 4,000,000
Booster Station (6,650 gpm), Complete with Hydropneumatic Tank and Appurtenances	\$ 473,813	LS	1	\$ 473,813
Transmission Line Complete (24-inch, DIP)	\$ 83	LF	44,000	\$ 3,652,000
CAP Treatment Subtotal				\$ 8,125,813
Tank (1.5 MG)	\$ 432,000	EA	2	\$ 864,000
Tank (2.3 MG)	\$ 580,000	EA	2	\$ 1,160,000
Tank (0.5 MG)	\$ 192,000	EA	1	\$ 192,000
Site Improvements (Grading, pads, excavation)	\$ 425,000	EA	2.5	\$ 1,062,500
8-Foot Block Wall	\$ 175	LF	4,400	\$ 770,000
Tank Site Piping, Valves, Meters, etc.	\$ 318,750	EA	2.5	\$ 796,875
Tank Site Electrical	\$ 312,500	EA	2.5	\$ 781,250
Tank Site Controls	\$ 156,250	EA	2.5	\$ 390,625
Tank Site Generator	\$ 218,750	EA	2.5	\$ 546,875
Tank(s) Subtotal				\$ 6,564,125
Transmission Line Complete (8-inch, DIP)	\$ 40	LF	5,280	\$ 211,200
Transmission Line Complete (24-inch, DIP)	\$ 83	LF	47,000	\$ 3,901,000
Transmission Line Subtotal				\$ 4,112,200
Booster Station (6,650 gpm), Complete with Hydropneumatic Tank and Appurtenances	\$ 473,813	LS	1	\$ 473,813
Booster Station (10,500 gpm), Complete with Hydropneumatic Tank and Appurtenances	\$ 748,125	LS	1	\$ 748,125
Subtotal				\$ 25,346,325
Contingency (15%)				\$ 3,801,949
Bonding				Excluded
Tax (6.3%)				\$ 1,836,341
Adjusted Total				\$ 30,984,615

*Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others or over the Contractor(s)' method of determining prices, or over the competitive bidding or market conditions, its opinions of probable Project Cost and Construction Cost provided herein are to be made on the basis of its experience and qualifications and represents its best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from its opinion of probable cost. If prior to the Bidding or Negotiating Phase, OWNER wishes greater assurance as to Project Cost, it shall employ an independent cost estimator.

**Price excludes engineering, right-of-way acquisition, legal, or other non-construction related costs

References

Division of Environmental Health Services, Bureau of Water Quality Control. Engineering Bulletin #10: Guidelines for the Construction of Water Systems, May 1978.

Ysusi, Mark A. "Water Distribution System Design." Hydraulic Design Handbook. Editor in Chief: Larry W. Mays. New York: McGraw-Hill, 1999

Appendices

Appendix A Pressure Zone Map






Appendix B Proposed Transmission Mains

Appendix A Pressure Zone Map

Lake Pleasant 5,000 Pressure Zone Boundaries

 Project Site

Pressure Zones

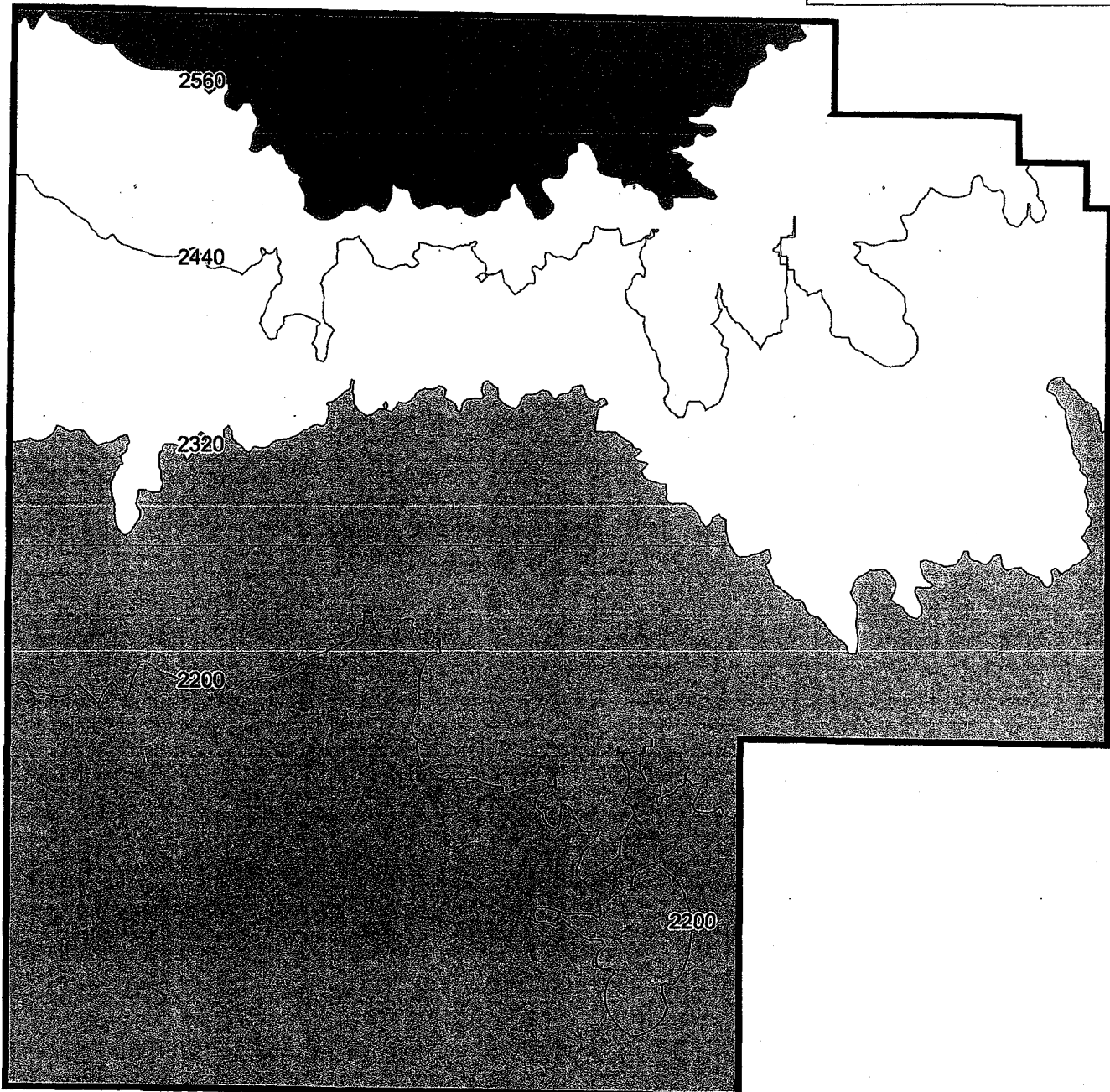
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Appendix B Proposed Transmission Mains

Proposed Transmission Main
Proposed CAP Transmission Main
CAP Canal

Sections



ITS

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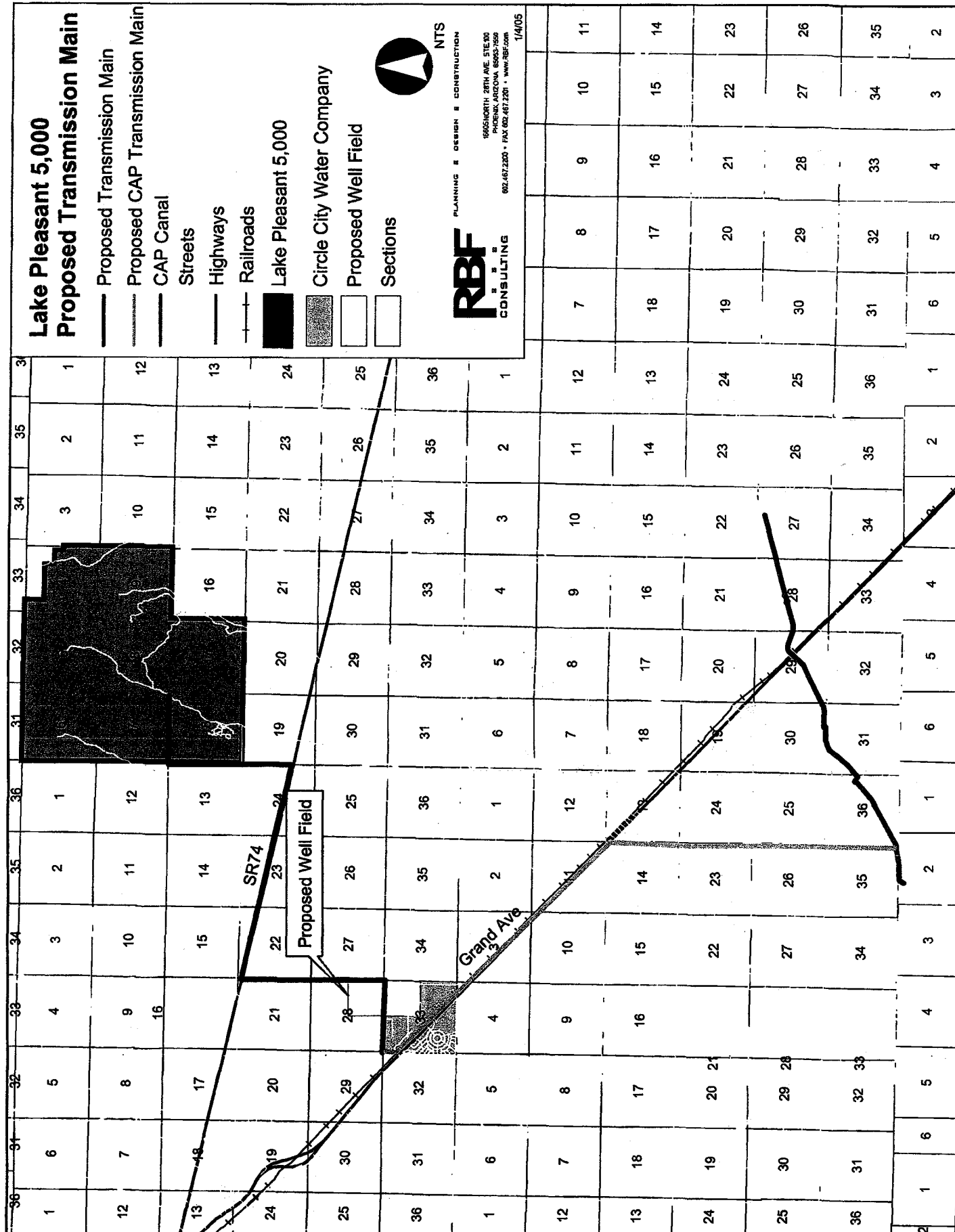


Exhibit IV
Cost Estimates

Developer's Initials: _____

Circle City - Lake Pleasant Cost Summary
Per CC&N model dated 02/02/2005

		Water Infrastructure		On-site Distribution	
		Engineering, Taxes, Permits		Engineering, Taxes, Permits	
		Raw Cost	Contingency	Raw Cost	Contingency
Total		Total		Total	
Tanks					
	On-site Tanks	\$ 5,502,500	\$ 1,172,033	\$ 6,674,533	
	Off-site Tanks	1,061,625	226,126	1,287,751	
Total Tanks		\$ 6,564,125	\$ 1,398,159	\$ 7,962,284	
Booster Stations					
	On-site Booster Stations	\$ 748,125	\$ 159,351	\$ 907,476	
	Off-site Booster Stations	473,813	100,922	574,735	
Total Booster Stations		\$ 1,221,938	\$ 260,273	\$ 1,482,211	
Transmission Mains					
	On-site 8" Transmission Main	\$ 211,200	\$ 44,986	\$ 256,186	
	Off-site 24" Transmission Main	3,901,000	830,913	4,731,913	
Total Transmission Mains		\$ 4,112,200	\$ 875,899	\$ 4,988,099	
Wells					
	On-site Wells	\$ 5,322,250	\$ 1,133,639	\$ 6,455,889	
Water Treatment					
	On-site Cap Treatment	\$ 8,125,813	\$ 1,730,798	\$ 9,856,611	
On-site Distribution					
(includes distribution mains, service lines and meters)				\$ 20,000,000	\$ 4,260,000
Totals		\$ 25,346,326	\$ 5,398,767	\$ 30,745,093	\$ 24,260,000

Appendix 1

On August 20, 1996 President Clinton signed into law the Small Business Job Protection Act (H.R. 344) which contained a provision that repealed a portion of the Tax Reform Act of 1986 ("TRA-86") which states that the "gross income of a corporation shall not include any contribution to the capital of the taxpayer". After January 1, 1987, Internal Revenue Code Section 118 treated contributions in aid of construction ("CIAC") as taxable income of electric, gas, water and sewer utility companies. The effect of such provision eliminates the "gross up" of CIAC's which, heretofore, were to be collected in reimbursement of a utility companies taxes payable from the CIAC. Section 1613 (a) of H.R. 3448 returns the IRC Section 118 to its pre-TRA-86 form regarding a utility companies CIAC taxable obligations. In order to satisfy this condition, H.R. 3448 requires certain criteria must be met by utility companies. Circle City Water Company L.L.C. anticipates being able to satisfy the applicable criteria. **H.R. 3448 IS RETROACTIVE TO JUNE 12, 1996 FOR ALL CIAC'S.**

H.R. 3448 required the IRS to develop specific regulations regarding this matter which were expected to be drafted during 1997. Additionally, the Arizona Corporation Commission has not, as of the date first set forth above, yet addressed the affect of H.R. 3448 by drafting new regulations which are expected to follow the IRS regulations.

Absent regulatory direction to the contrary, Circle City Water Company, L.L.C. does not expect to collect customer "gross up taxes" after June 12, 1996. This policy is subject to final IRS regulations and Arizona statute revisions.

1629002.1/20496.003

EXHIBIT II

Water Facilities Agreement

This Water Facilities Agreement ("Agreement") entered into this 15 day of May 2005, by and between Circle City Water Company, LLC ("Circle City") with primary business offices located at 3101 State Rd., Bakersfield, California 93308 and Harvard Investments, Inc. ("Developer") with its principal mailing address at 17700 N. Pacesetter Way Scottsdale, Arizona 85255 (hereafter collectively referred to as the "Parties"). The Parties contemplate the Developer's construction of on-site and off-site water utility plant necessary to provide domestic service, as further described herein, for Developer's project, Lake Pleasant 5000 ("Development"), which development is more fully described by Exhibit I attached hereto.

Section I: Recitals

1. WHEREAS, Circle City is a properly organized Arizona corporation in good standing; and,
2. WHEREAS, Circle City is public service corporation within the meaning of Article XV of the Arizona Constitution; and,
3. WHEREAS, Circle City operates a water utility system subject a Certificate of Convenience and Necessity ("CC&N") by the Arizona Corporation Commission ("ACC"), and also subject to the various joint and several jurisdictions of Arizona Department of Environmental Quality ("ADEQ"), Arizona Department of Water Resources ("ADWR") and other regulatory authorities, not expressly described by this section, which may have jurisdiction over certain aspects of the operations of Circle City; and,
4. WHEREAS, Developer is a private party that has requested, pursuant to its Request for Service letter dated September 30, 2004, that Circle City provide potable domestic water service to the Development, which is outside of its present CC&N. Wastewater utility service will be provided to the Development by a municipality or private utility provider and Developer is in the process of obtaining necessary approvals and agreements for such service; and,
5. WHEREAS, Circle City has accepted Developer's request to provide potable domestic water service to the Development subject to obtaining ACC approval to extend its CC&N to include the Development; and,
6. WHEREAS, Circle City is willing to file an application with the ACC requesting an extension of its CC&N to include the Development, in accordance with Section VIII of this Agreement; and
7. WHEREAS, Circle City does not presently operate a water distribution system able to serve potable domestic water to the Development without contemplation of this Agreement; and
8. WHEREAS, Developer is willing to construct facilities, both on-site distribution and off-site water infrastructure utility facilities necessary for Circle City to serve the Development; and
9. WHEREAS, concurrently with the filing to extend its CC&N, Circle City also intends to seek authority from the ACC to collect an Off-Site Hook-Up Fee to fund construction of off-site infrastructure including wells, storage tanks, booster pumps, pressure tanks, transmission mains and/or related appurtenances necessary for proper operation, including engineering and design costs; and
10. WHEREAS, if the ACC approves the proposed Off-Site Hook-Up Fee Tariff in a form materially similar to that proposed by Circle City and attached hereto as Exhibit II, Circle City agrees to treat Developer's construction of off-site facilities consistent with that tariff.

NOW, THEREFORE BE IT RESOLVED the Parties to this Agreement do hereby agree as follows:

Section II.: Construction Of On-Site And Off-Site Facilities, Treatment of Costs, Payment of Administrative Costs

1. Developer will construct, or cause to be constructed, on-site distribution facilities sufficient to fully satisfy Developer's requirements for water utility service to the Development by Circle City as further described by this Agreement.
2. Developer will also construct, or cause to be constructed, water infrastructure facilities, including wells, storage tanks, booster pumps, pressure tanks, transmission mains and/or related appurtenances sufficient to fully satisfy Developer's requirements for water utility service to the Development by Circle City as further described by this Agreement. The off-site water infrastructure facilities necessary for Circle City to extend water utility service to the Development are described in the Water Master Plan for Lake Pleasant 5,000 attached hereto as Exhibit III and incorporated herein by this reference.
3. Developer shall determine the financing and timing for construction of the on-site and off-site facilities. The cost of the off-site facilities will constitute a credit against any amounts Developer would be obligated to pay under an Off-Site Hook-Up Fee Tariff (Exhibit II), if such charge is authorized by the ACC following application made by Circle City as requested by Developer. The estimated cost of the on-site distribution facilities described in Exhibit III is Twenty-Four Million, Two Hundred and Sixty Thousand Dollars (\$24,260,000) and shall hereinafter be referred to as the "estimated advance." The estimated cost of the off-site facilities described in Exhibit III is Thirty Million, Seven Hundred and Forty Five Thousand, Ninety-Two Dollars (\$30,745,092) and shall hereinafter be referred to as the "estimated off-site hook-up fee credit." To the extent the off-site facilities costs exceed the estimated off-site hook up fee credit, or, if the ACC does not approve the Off-Site Hook-Up Fee Tariff in a form materially similar to that attached as Exhibit II, Developer will be responsible to finance the costs of any off-site facilities necessary for Circle City to furnish water utility service to the Development and any such amounts will be treated as non-refundable contributions in aid of construction.
4. Developer agrees that the size, design, type and quality of materials used to construct the on-site distribution facilities and off-site water infrastructure facilities (collectively, the on-site and off-site facilities are referred to at times herein as the "Improvements") , as well as the location of those facilities upon and under the ground, shall be approved by Circle City prior to the commencement of construction and that those facilities shall be designed and constructed in accordance with all applicable standards of Circle City, ADEQ, ACC and any other governmental agencies exercising jurisdiction over the design and construction of water utilities systems. The total cost estimates for the Improvements are more fully described in Exhibit IV. All plans and specifications shall be submitted to Circle City prior to submission for approval by any regulatory agencies and Circle City shall have thirty (30) days within which to revise or approve the plans. If Circle City does not provide comments within that thirty-day period, the plans and specifications will be deemed approved by Circle City. Circle City shall have the right to require certain configurations that meet prudent utility practice and general industry practice, to participate in design review and design verification activities, pre- and post-construction inspection requirements, commissioning requirements, test and trials (design validation), and to prescribe certain equipment over other equipment, provided, however, Circle City cannot require changes to the configuration, design or equipment after approval of the plans and specifications.
5. In addition to the estimated advance and estimated off-site hook-up fee credit, Developer shall additionally pay to Circle City an amount sufficient to pay for reasonable administrative costs, including accounting, engineering and inspection services in connection with the construction of the

on-site and off-site facilities, and verifiable legal expenses for the preparation of this Agreement, request for expansion of its CC&N and approval of an off-site hook-up fee. Circle City shall, upon request, provide proof of such costs to Developer prior to reimbursement by Developer of any such costs incurred by Circle City. Developer shall also reimburse Circle City for its reasonable pecuniary costs incurred in the management, supervision and inspection of Improvements.

- 6 All funds payable pursuant to this Agreement, including any adjustments thereto, shall be paid by Developer to Circle City in the form of certified cashiers check or personal check or other means agreed by the Parties, the validity of which shall be determined only after satisfaction of same by the financial institution upon which it is drawn.
7. If, for any reason, any balance remains unpaid by Developer, Circle City shall be paid by Developer prior to Circle City's acceptance of transfer of the on-site and off-site facilities, **DEVELOPER ACKNOWLEDGES AND AGREES THAT IT IS THE EXPRESSED PURPOSE OF THIS SECTION NOT TO PERMIT THE EXTENSION OF SERVICE BY CIRCLE CITY TO ANY LOT OR CUSTOMER IN THE DEVELOPMENT UNTIL ALL AMOUNTS BEING FULLY PAID WHICH WERE INCURRED IN CONNECTION WITH THIS AGREEMENT.**

Section III: Conditions of Facilities Construction

1. The acceptance by Circle City of any conveyance of the Improvements to be constructed by Developer, as referenced in **Exhibit III** and **Exhibit IV** respectively, are further conditioned upon Developer's acceptance of each of the following conditions:
 - a) That Developer connect at least one (1) water service connection to the property described in **Exhibit I**, except as may otherwise be expressly provided by this Agreement.
 - b) That prior to the commencement of construction of any Improvements, all permits, approvals, licenses and easements required in connection with any on-site and/or off-site facilities shall be obtained, recorded, transferred or otherwise developed by Developer retaining the right to ultimately transfer all such permits, approvals, licenses and easements in to Circle City so as to completely satisfy all authorities having jurisdiction over regulation or approval of any on-site and/or off-site facilities.
 - c) That all easements and rights-of-way shall be free of obstacles which may interfere with construction or subsequent operation of any Improvements contemplated by this Agreement, as exclusively determined by Circle City. If facilities require road, pavement and/or concrete construction, all such development shall be constructed at grade elevations. No pavement or curbs shall be installed prior to completion of any Improvements contemplated by this Agreement or otherwise approved in advance of construction by Circle City. If any streets, roads, alleys, or drainage ways are not constructed in accordance with this section, Developer shall bear all costs of every type and description, on a non-refundable basis, that are incurred by Developer or Circle City to relocate facilities as a result of said facilities not being constructed in accordance with this section.
 - d) That no engineering changes be made, caused, required or incurred by Developer in connection with any utility construction standards, any regulatory authority or any State or County health department, or any other public agency under whose jurisdiction the construction of the facilities contemplated under this Agreement may be deemed appropriate, without the advance written approval of Circle City, which approval shall not be unreasonably withheld.

- e) That Developer comply with any additional terms and conditions as may be set forth in other sections of this Agreement, which may be attached hereto and incorporated by reference for all purposes.

Section IV: Service, Circle City Liability Limitations

1. Notwithstanding any reference to fire protection facilities contained in this Agreement, the Improvements are being constructed by Developer and will be transferred to Circle City for the purpose of providing domestic water service to the Development. However, under certain operating conditions as exclusively determined by Circle City, the Improvements may be used, with the prior written approval of Circle City, to provide limited emergency fire protection service to an official fire protection agency which has previously contracted with Circle City for such service.
2. It is understood by Developer, as evidenced by the execution of this Agreement, that Circle City does not have the responsibility to provide, and shall not construct under this Agreement, facilities capable of providing any fire flow to the Improvements. Therefore, it is expressly agreed and understood by Developer that **CIRCLE CITY DOES NOT GUARANTEE OR ENSURE UNINTERRUPTED OR REGULAR WATER SERVICE; NOR DOES CIRCLE CITY REPRESENT THE AVAILABILITY OF ADEQUATE PRESSURE, VOLUME OR FIRE FLOW FROM THE SYSTEM BY OFFERING DOMESTIC WATER SERVICE PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION SECTION XI, PARAGRAPH 16.**
3. It is agreed that in the event that service from a fire hydrant, or an interior fire sprinkler system which is used for non-fire protection purposes, is interrupted or is irregular or defective or fails from causes beyond Circle City's control, or through the negligence or alleged negligence of its employees, services, agents or other representatives, Circle City shall not be liable for any injuries or damages arising therefrom. Further, Circle City shall have neither the responsibility nor the liability for any use or disposition of fire hydrant or fire protection water, even if such use or disposition is attributable, or is alleged to be attributable to the negligence of Circle City's employees, agents, servants, or other representatives. Developer, or any other person or entity which succeeds to Developer's interest, REGARDLESS OF WHETHER SUCH PERSON OR ENTITY HAS KNOWLEDGE OR NOTICE OF THESE TERMS, shall make no claim against Circle City for any such loss or damage resulting from services provided under this Agreement or the applicable service tariff. Circle City shall be entitled to recover its reasonable attorney's fees should Developer fail to properly comply with this provision.

Section V: Rates and Tariffs

1. It is understood and agreed by Developer, as evidenced by its execution of this Agreement, that all charges for domestic water services to the Development shall, at all times, be at then applicable tariffs of Circle City as established by the ACC, including an Off-Site Hook-Up Fee Tariff if approved by the ACC, which approval will be sought by Circle City concurrent with its request to extend its CC&N to include the Development. Circle City's tariffs are subject to change from time to time upon application by Circle City and as approved by the Commission.

Section VI: Permits and Licenses, Easements, Title

1. Circle City and Developer agree to obtain all permits and licenses from all authorities having jurisdiction which may be required for the construction of any of the Improvements necessary for Circle City to provide water utility service to the Development.
2. Prior to the commencement of construction any Improvements, Developer shall, if applicable, obtain from the owners of any property upon which on-site and/or off-site facilities are to be constructed, a

perpetual private water utility easement for construction, operation and maintenance of the Improvements on the behalf of, and in the name of, Circle City and in a form acceptable to Circle City.

3. All materials, facilities constructed, and water supply equipment provided in connection with construction of any Improvements under this Agreement and the completed facilities as installed shall be transferred by bill of sale and/or any other necessary conveyance document to Circle City, and thereafter shall become the sole and exclusive property of Circle City, and full legal and equitable title thereto shall be completely and fully vested in Circle City, free and clear of any liens. Developer agrees to execute or caused to be executed promptly all such documents as Circle City or its representatives may request to evidence good and merchantable title to said Improvements free and clear of all liens.

Section VII: Advance Amount, Refund, Transfer

1. As described by this Agreement, all advances for on-site distribution facilities shall be made by Developer as specified hereunder. If the actual costs of on-site distribution facilities are revised, in accordance with this Agreement, the additional advance shall be applied thereto and/or adjusted by the same amount.
2. All costs of on-site distribution facilities advanced hereunder and applicable administrative, legal, accounting, engineering, inspection and other pecuniary costs for supervision and management shall be refunded in accordance with A.A.C. § R14-2-406(D) – 10% of all revenue generated by customers within the Development each year for 20 years beginning with the commencement of water utility service within the Development. Under no circumstance shall Developer be entitled to, or receive, any amount in excess of the actual costs of on-site distribution facilities and applicable administrative, legal and engineering costs, nor shall Developer receive any refund from Circle City of any amounts paid for off-site facilities, whether such amounts are paid pursuant to an ACC-approved Off-Site Hook-Up Fee tariff or otherwise.
3. Subject to Appendix 1, attached hereto, the costs to be paid by Developer hereunder for any Improvements do not include any amount necessary for the payment of State or federal income taxes in connection therewith, which amounts shall be the responsibility of Developer should such income tax liabilities be imposed on Circle City at a later date as a result of the payment of any amounts and/or the conveyance of any facilities by Developer to Circle City under the Agreement.
4. Developer understands, acknowledges and agrees, as evidenced by its execution of this Agreement, that it is solely responsible to notify Circle City of any change of address used in connection with any provision hereunder. All changes of address of Developer should be forwarded in writing to Circle City's offices as first set forth above.
5. In the event of the sale, conveyance or transfer by Circle City, pursuant to the approval of the Regulatory Authorities, of any portion of its water system, including the facilities serving the Development and installed pursuant to the terms of this Agreement, Circle City's obligations under this Agreement shall cease (except to any payment which may be then due) conditioned upon the transferee assuming, and agreeing to pay Developer, any sums payable to Developer thereafter in accordance with any provisions of this Agreement.

Section VIII: Extension of Circle City's CC&N

1. Circle City hereby agrees to file an application with the ACC for the expansion of its CC&N to include the Development as well as a request for authority to collect an Off-Site Hook-Up Fee under the form of tariff represented in Exhibit II.
2. All obligations under this Agreement shall be conditioned upon Circle City gaining authority, free from any unreasonable condition, from the ACC to include the Development in Circle City's

certificated service area. Further, Developer covenants and agrees to support Circle City's application to extend its CC&N and for approval of an Off-Site Hook-Up Fee Tariff, and shall, upon request by Circle City and/or its assigns, provide testimony and/or public comment supporting Circle City's application in connection with any proceeding before the ACC. In the event the ACC does not grant Circle City's request for a CC&N extension, Circle City's and Developer's obligations under this Agreement will terminate, except that Developer will still be responsible to reimburse Circle City for its reasonable and verifiable administrative, accounting, legal, engineering, inspection and other similar costs incurred under this Agreement prior to its termination under this provision.

Section IX: General Conditions

1. Each of the recitals set forth in Section 1 above are hereby incorporated into this Agreement by this reference as if fully set forth herein. This Agreement may not be modified or amended except by a writing signed by both parties. The remedies provided for in this Agreement shall not be deemed either Parties' exclusive remedies but shall be in addition all other remedies available to Circle City at law or equity. No waiver by Circle City of any breach by Developer of any provision of this Agreement shall in any way be construed as a waiver of any future or subsequent breach by Developer or bar the right of Circle City to insist on strict performance by Developer of the provisions in this Agreement in the future. Developer is an independent party and not an agent or employee of Circle City.
2. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and representatives; provided, however, that no assignment or transfer of any of the obligations, powers, duties or rights created in the obligee or assignee by this Agreement shall be binding upon any of the Parties to this Agreement until such assignment or transfer is approved in writing by each of the Parties hereto.
3. If any suit or other action or proceeding is brought to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonably attorneys' fees and costs, such amounts as may be established by a court and not a jury.
4. This Agreement embodies the entire agreement between the Parties and supersedes all prior and contemporaneous oral or written agreements, representations and understandings, if any, relating to the subject matter hereof which shall hereby be superseded and merged. All documents attached to this Agreement shall be read and interpreted as consistent with one another.
5. Section headings are for the convenience of reference only and shall in no way affect the interpretation of this Agreement. This Agreement is the result of good faith negotiations between the Parties and, accordingly, shall not be construed for or against either Party regardless of which Party drafted this Agreement or any portion thereof.
6. Developer does not intend the benefits of this Agreement to inure to any third party, nor shall this Agreement be construed to make or render Circle City liable to any creditor, materialman, supplier, tax collector, contractor, subcontractor, broker, purchaser or lessee of the Improvements.
7. Each Party shall execute and deliver all such documents and perform all such acts as reasonably requested by any party from time to time to perform the duties and obligations contemplated by this Agreement.
8. All annexes, schedules and exhibits attached hereto are hereby incorporated into this Agreement by each reference thereto as if fully set forth at each reference.
9. Each Party acknowledges and warrants that it is fully authorized and empowered to execute this Agreement by and through the individuals executing below.

10. Any notices or communication required or permitted to be given to any of the Parties to this Agreement must be in writing and shall be effective upon the earlier of (a) the date when received by such party, or (b) the date which is three (3) days after mailing, postage prepaid, by certified or registered mail, return receipt requested, to the address of such party as indicated below, or (c) by tele-facsimile delivered or transmitted to the party to whom such notice is required or directed in accordance with that information first set forth above. Any such notices to be personally delivered may be delivered to the principal offices or location of the other party to whom such notice is directed. Any such notice shall be deemed to have been given (whether actually received or not) on the day it is personally delivered as aforesaid. Any party to this Agreement may change its address or delivery location by giving notice to the other party pursuant to this section.
11. Time is of the essence with regard to each provision of this Agreement as to which time is a factor. If this Agreement provides that any time period expires or date for performance specified in this Agreement falls on a non-business day (i.e. Saturday, Sunday or legal holiday recognized by the State of Arizona), such time period or performance deadline shall be extended to the next business day.
12. This Agreement has been prepared, is being executed and delivered, and is intended to be performed in the State of Arizona. The substantive laws of the State of Arizona and the applicable federal laws of the United States of America shall govern the validity, construction, enforcement and interpretation of this Agreement and all documents related hereto without regard to conflict of the law rules.
13. The Parties hereto agree to do all such things and take all such action, and to make, execute and deliver such documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.
14. This Agreement may be executed in multiple counterparts, each of which, when so executed shall be deemed an original but all such counterparts shall constitute but one and the same Agreement.
16. **Developer acknowledges that the on-site and certain off-site water infrastructure facilities are being installed for the purpose of providing domestic water service to the Development, which is further described in Exhibit I. Under certain operating conditions, the facilities may provide limited fire protection service to appropriate fire protection agencies contracting with the Circle City for such service. However, it is expressly understood by the Circle City and the Developer that Circle City will provide a minimum delivery pressure of 20 pound per square inch at the customer's meter or point of delivery in accordance with A.A.C. R14-2-407.E, but that Circle City does not guarantee or ensure uninterrupted or regular fire protection service. Developer further acknowledges that Circle City does not represent or warrant that the domestic water utility service provided by Circle City meets any rules, regulations or other standards for fire protection imposed by any governmental entity; nor does Circle City accept or assume any obligation of Developer, whether express or implied, pertaining to the property described in Exhibit I including, without limitation, assurances of water for fire protection purposes, except as expressly set forth in this Agreement.**
17. Developer, if actually defined to represent more than a single individual, shall be jointly and severally liable for all duties and obligations under this Agreement.

Section X: Acceptance

IN WITNESS HEREOF, the Parties do hereby agree to the foregoing covenants, terms and conditions of the Agreement dated as first set forth above.

LAKE PLEASANT 5000, L.L.C., an Arizona limited liability company

By: Harvard 5K, L.L.C, an Arizona limited liability company

Its: Manager

By: Harvard Investments, Inc., a Nevada corporation

Its: Manager

By: 

Its: VP

For: Circle City Water Co. L.L.C.

By:

Its:

Robert T. Hardcastle

Managing Member

Section X: Acceptance

IN WITNESS HEREOF, the Parties do hereby agree to the foregoing covenants, terms and conditions of the Agreement dated as first set forth above.

LAKE PLEASANT 5000, L.L.C., an Arizona limited liability company

By: Harvard 5K, L.L.C, an Arizona limited liability company

Its: Manager

By: Harvard Investments, Inc., a Nevada corporation

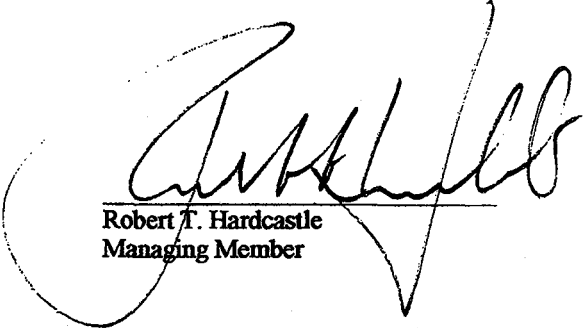
Its: Manager

By: _____
Its: _____

For: Circle City Water Co. L.L.C.

By:

Its:



Robert T. Hardcastle
Managing Member

Exhibit I

Vicinity Map and Legal Description

Legal Description:

4,882 acres

Phase II
LP 5050

PARCEL NO. 1:

The Southeast quarter; and

The Southeast quarter of the Southwest quarter of Section 4, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2:

All of Section 9, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3:

The East half of the Northeast quarter; and

The East half of the Southeast quarter of Section 17, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4:

Lot 4; and

The Southwest quarter of the Northeast quarter; and

The Southwest quarter of the Southeast quarter of the Northeast quarter; and

The West half of the Southeast quarter of the Southeast quarter of the Northeast quarter; and

The South half of the Northwest quarter; and

The South half of Section 4, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Southeast quarter; and also

EXCEPT the Southeast quarter of the Southwest quarter.

PARCEL NO. 5:

The Southeast quarter of the Northeast quarter of Section 5, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 6:

A.

Lots 4 and 5 of Section 5, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 7:

The South half of the Northeast quarter; and

The Southeast quarter of the Northwest quarter; and

The South half of Section 6, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT Lots 6 and 7.

PARCEL NO. 8:

All of Section 7, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9:

The Northwest quarter of the Northwest quarter of Section 8, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10:

All of Section 17, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the East half of the Northeast quarter and the East half of the Southwest quarter of Section 17, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 11:

All of Section 18, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northeast quarter of the Northeast quarter thereof.

PARCEL NO. 12:

The South half of Section 5, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 13:

**Section 8, Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian,
Maricopa County, Arizona;**

EXCEPT the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 14:

**The North half of Section 5, Township 6 North, Range 2 West of the Gila and Salt River Base
and Meridian, Maricopa County, Arizona;**

EXCEPT the Southeast quarter of the Northeast quarter of said Section 5; and also

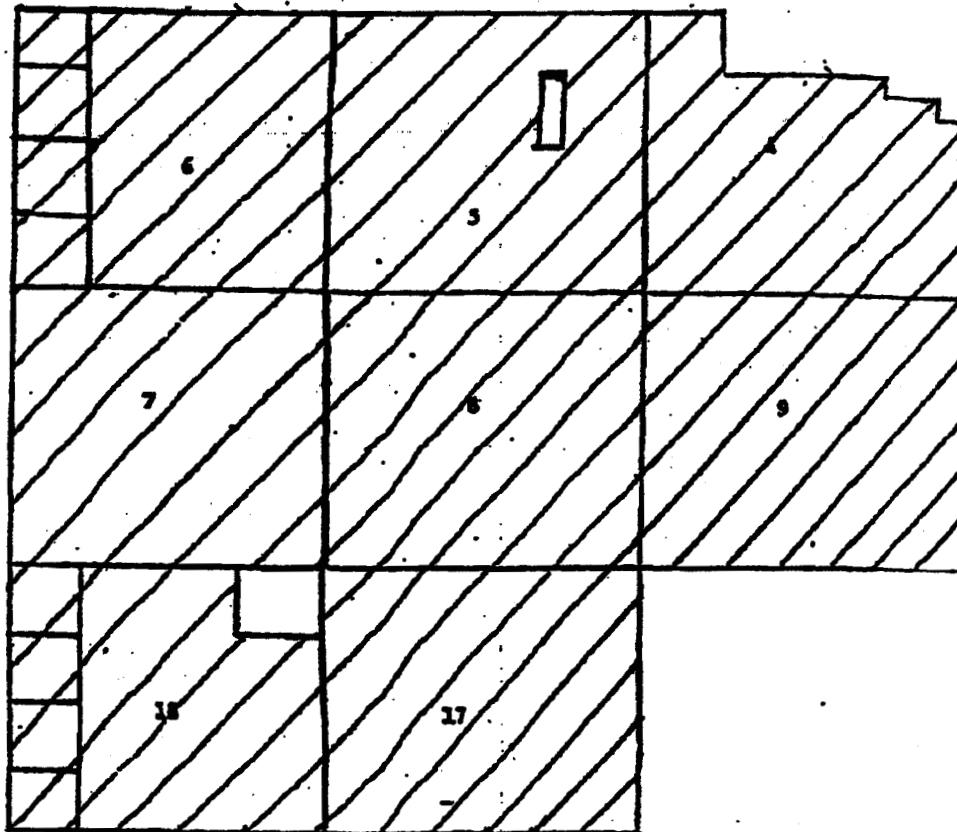
**EXCEPT the East half of the East half of the Southwest quarter of the Northeast quarter of
said Section 5.**

PARCEL NO. 15:

**Governmental Lots 1, 2, 3, 6 and 7, Section 8, Township 6 North, Range 2 West of the Gila
and Salt River Base and Meridian, Maricopa County, Arizona.**

EXHIBIT "A"

Township 6 North, Range 2 West of the Gila and Salt River Base and Meridian,
Maricopa County, Arizona.



160 acres

Phase I
Warrant 160

EXHIBIT "A"

Legal Description of Property

Parcel 1:

The Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the North 210.00 feet of the South 2090.00 feet of the West 210.00 feet of the East 910.00 feet.

Parcel 2:

The North 210.00 feet of the South 2090.00 feet of the West 210.00 feet of the East 910.00 feet of the Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

EXHIBIT III

When recorded, please return to:
Central Arizona Water
Conservation District
P.O. Box 43020
Phoenix, Arizona 85080-3020
Attn: Manager, Groundwater
Replenishment District

FILE COPY

**AGREEMENT AND NOTICE OF MUNICIPAL PROVIDER
REPORTING REQUIREMENTS FOR
WARRICK PROPERTY
REGARDING MEMBERSHIP IN THE CENTRAL ARIZONA
GROUNDWATER REPLENISHMENT DISTRICT**

This Agreement and Notice of Municipal Provider Reporting Requirements for Warrick Property Regarding Membership in the Central Arizona Groundwater Replenishment District is made this ____ day of _____, 2007 among the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a political subdivision of the State of Arizona; SMT INVESTORS LIMITED PARTNERSHIP, an Arizona limited partnership, as to an undivided 25% interest and BOA SORTE LIMITED PARTNERSHIP, an Arizona limited partnership, as to an undivided 25% interest, and WARRICK 160, L.L.C., an Arizona limited liability company, as to an undivided 50% interest as to Parcel Nos. 1, 2 and 5; SMT INVESTORS LIMITED PARTNERSHIP, an Arizona limited partnership, as to an undivided 25% interest and CARDON FAMILY, L.L.C., an Arizona limited liability company, as to an undivided 25% interest, and WARRICK 160, L.L.C., an Arizona limited liability company, as to an undivided 50% interest as to Parcel Nos. 3 and 4, and CIRCLE CITY WATER CO., an Arizona limited liability company.

RECITALS

A. Owner is the owner of the Property, legally described in Exhibit A attached and incorporated into this Agreement.

B. Owner has applied to the Department for a certificate of assured water supply for the Property pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9. Owner and the Municipal Provider have executed a notice of intent to serve agreement, as required by the Department, whereby the Municipal Provider has agreed to provide water to the Property.

C. As permitted by Arizona Revised Statutes § 45-576.01(B), Owner desires to satisfy one requirement for obtaining a certificate of assured water supply by qualifying the Property as Member Land pursuant to the Groundwater Replenishment Statute. As Member Land, the Property will be a member of the Central Arizona Groundwater Replenishment District, an operating subdivision of CAWCD.

D. To qualify the Property as Member Land and to permit the delivery of Excess Groundwater to the Property as Member Land, the Groundwater Replenishment Statute requires the Property to be subject to the Declaration.

E. To qualify the Property as Member Land, the Groundwater Replenishment Statute also requires the Municipal Provider to record this Agreement and comply with certain annual reporting requirements in accordance with Arizona Revised Statutes § 48-3774(C).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 "Agreement" means this Agreement and Notice of Municipal Provider Reporting Requirements for Warrick Property Regarding Membership in the Central Arizona Groundwater Replenishment District, as amended from time to time.

1.2 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.3 "Declaration" means the Declaration of Covenants, Conditions and Restrictions for Warrick Property Regarding Membership in the Central Arizona Groundwater Replenishment District recorded by Owner, as declarant, against the Property.

1.4 "Department" means the Arizona Department of Water Resources, an agency of the State of Arizona, and any successor agency.

1.5 "Director" means the director of the Department.

1.6 "Excess Groundwater" means the amount of Groundwater equal to the amount of Groundwater delivered to the Property in a calendar year in excess of the amount of Groundwater that may be used at the Property in that calendar year consistent with the applicable Assured and Adequate Water Supply Rules adopted by the Department for the Phoenix Active Management Area pursuant to Arizona Revised Statutes § 45-576(H), subject to the provisions of Paragraph 2.4 herein.

1.7 "Groundwater" is as defined in Arizona Revised Statutes § 45-101(5).

1.8 "Groundwater Replenishment Statute" means Arizona Revised Statutes, Title 48, Chapter 22.

1.9 "Member Land" is as defined in Arizona Revised Statutes § 48-3701(10).

1.10 "Municipal Provider" means Circle City Water Co., an Arizona limited liability company, and its successors and assigns.

1.11 "Owner" means SMT INVESTORS LIMITED PARTNERSHIP, an Arizona limited partnership, as to only an undivided 25% interest, and BOA SORTE LIMITED PARTNERSHIP, an Arizona limited partnership, as to only an undivided 25% interest, and WARRICK 160, L.L.C., an Arizona limited liability company, as to only an undivided 50% interest, in that portion of the Property described in Exhibit A as Parcel Nos. 1, 2 and 5; SMT INVESTORS LIMITED PARTNERSHIP, an Arizona limited partnership, as to only an undivided 25% interest, CARDON FAMILY, L.L.C., an Arizona limited liability company, as to only an undivided 25% interest, and WARRICK 160, L.L.C., an Arizona limited liability company, as to only an undivided 50% interest, in that portion of the Property described in Exhibit A as to Parcel Nos. 3 and 4, and their successors and assigns.

1.12 "Parcel" means any portion of the Property now existing or hereafter established for which the tax assessor for the county in which the Property is located has issued a separate tax parcel number. The current tax parcel number for each Parcel is as shown in Exhibit B attached and incorporated into this Agreement.

1.13 "Parcel Replenishment Obligation" means, with respect to any particular Parcel, an amount of Groundwater that is equal to the amount of Groundwater delivered to the Parcel in a calendar year multiplied by the percentage that the Excess Groundwater of the Property for that year bears to the total amount of Groundwater delivered to the Property during that year.

1.14 "Property" means the real property described in Recital A.

1.15 "Report(s)" means the report(s) required to be prepared by the Municipal Provider in accordance with Arizona Revised Statutes § 48-3775(A) and this Agreement.

ARTICLE 2 REPORTING REQUIREMENTS

2.1 Annual Reports. In accordance with Arizona Revised Statutes § 48-3775(A), on or before March 31 of each year after the recordation of this Agreement, the Municipal Provider shall file a Report with CAWCD, with the Director, and with the tax assessor and treasurer for the county where the Property is located that contains the following information for the preceding calendar year, which is the reporting year:

2.1.1 The amount of Groundwater delivered by the Municipal Provider to each Parcel, identified by the applicable tax parcel number, and the basis for the calculation of the amount of Groundwater delivered.

2.1.2 The amount of Groundwater delivered by the Municipal Provider to the Property, and the basis for the calculation of the amount of Groundwater delivered.

2.1.3 The amount of Excess Groundwater delivered by the Municipal Provider to the Property, and the basis for the calculation of the amount of Excess Groundwater delivered.

2.1.4 The Parcel Replenishment Obligation of each Parcel, identified by the applicable tax parcel number.

2.1.5 Such other information as CAWCD may reasonably require.

2.2 Records. In accordance with Arizona Revised Statutes § 48-3775(F), the Municipal Provider shall maintain current and accurate records of the information required to be included in the Reports.

2.3 Form of Reports. In accordance with Arizona Revised Statutes § 48-3777, CAWCD shall determine the form of the Reports to be submitted by the Municipal Provider in order to carry out the purposes of the Groundwater Replenishment Statute.

2.4 Minimum Quantity of Excess Groundwater. A minimum of 2/3 (two-thirds) of the Groundwater delivered by the Municipal Provider to the Property in any year shall be reported as Excess Groundwater delivered to the Property in that year.

ARTICLE 3 ENFORCEMENT POWERS

3.1 Penalty for Failure to Report. If the Municipal Provider fails to timely file a Report as required by CAWCD, CAWCD may assess a penalty in accordance with Arizona Revised Statutes § 48-3775(G).

3.2 Inspections, Investigations and Audits. The CAWCD has the rights provided under Arizona Revised Statutes § 48-3783 with respect to inspections, investigations and audits.

ARTICLE 4 GENERAL PROVISIONS

4.1 Binding Effect. The provisions of this Agreement inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Agreement or any part or interest herein by the Municipal Provider is valid until approved by CAWCD, which approval may be withheld solely on the basis of CAWCD's determination that assignment would cause the Municipal Provider, Owner, or CAWCD to be out of compliance with the Groundwater Replenishment Statute or unable to meet its obligations under this Agreement or under the Groundwater Replenishment Statute. The Municipal Provider and Owner agree and covenant to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Agreement and the Groundwater Replenishment Statute.

4.2 Entire Agreement. This Agreement constitutes the entire agreement among the parties and no understandings or obligations not expressly set forth in this Agreement are binding upon the parties.

4.3 Amendments. This Agreement may be modified, amended or revoked only (i) by the express written agreement of the parties hereto; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 4.5.

4.4 Interpretation. This Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

4.5 Rules, Regulations and Successor Statutes. All references in this Agreement to Arizona Revised Statutes include all rules and regulations promulgated by the Department under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

4.6 Severability. Any determination by any court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Agreement.

4.7 Captions. All captions, titles or headings in this Agreement are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Agreement.

4.8 Notices. Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD:

For delivery use: Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use: Central Arizona Water Conservation District
P.O. Box 43020
Phoenix, Arizona 85080-3020
Attn: Manager, Groundwater Replenishment District

Municipal
Provider:

Circle City Water Co.
Attention: Mr. Robert T. Hardcastle
P.O. Box 82218
Bakersfield, California 93380

Owner:

Warrick 160, L.L.C.
17700 North Pacesetter Way
Scottsdale, Arizona 85255

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

4.9 Consent to Recording. Owner hereby consents to the recording of this Agreement against the Property.

IN WITNESS WHEREOF, the Parties to this Agreement have executed this Agreement as of the date first set forth above.

CAWCD:

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____

David S. "Sid" Wilson, Jr.

Its: General Manager

MUNICIPAL
PROVIDER:

CIRCLE CITY WATER CO., an Arizona limited liability
company

By: _____

Its: Manager

By: _____

Its: Manager

OWNERS:

SMT INVESTORS LIMITED PARTNERSHIP, an Arizona limited partnership, as to only an undivided 25% interest in that portion of the Property described in Exhibit A as Parcel Nos. 1, 2, 3, 4 and 5

By: MRW MANAGEMENT COMPANY, INC., an Arizona corporation

Its: General Partner

By: _____

Michael T. Cowley

Its: Vice President

BOA SORTE LIMITED PARTNERSHIP, an Arizona limited partnership, as to only an undivided 25% interest in that portion of the Property described in Exhibit A as Parcel Nos. 1, 2 and 5

By: BOA SORTE, LLC, an Arizona limited liability company

Its: General Partner

By: _____

Wilford R. Gordon

Its: Manager

WARRICK 160, L.L.C., an Arizona limited liability company, as to only an undivided 50% interest in that portion of the Property described in Exhibit A as Parcel Nos. 1, 2, 3, 4 and 5

By: HARVARD INVESTMENTS, INC., a Nevada corporation

Its: Manager

By: _____

Its: _____

CARDON FAMILY, L.L.C., an Arizona limited liability company, as to only an undivided 25% interest in that portion of the Property described in Exhibit A as Parcel Nos. 3 and 4

By: _____


Wilford R. Cardon

Its: Manager

STATE OF ARIZONA)
) ss.
County of MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by David S. "Sid" Wilson, Jr., the General Manager of Central Arizona Water Conservation District.

Notary Public

My commission expires:

STATE OF)
) ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of
____, 2007, by _____ the Manager of Circle City
Water Co..

*See attachment
January 7, 2008*

Notary Public

My commission expires:

STATE OF)
) ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of
____, 2007, by _____ the Manager of Circle City
Water Co..

*See attachment
January 7, 2008*

Notary Public

My commission expires:

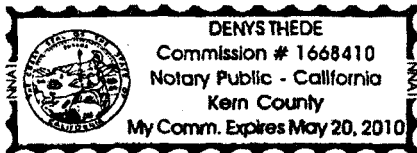
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of KERN

On JANUARY 7, 2008 before me, DENYS THEDE, NOTARY PUBLIC

personally appeared ROBERT HARDCASTLE AND LEE JAMIESON



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he/she~~ they executed the same in ~~his/her~~ their authorized capacity(ies), and that by ~~his/her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: AGREEMENT & NOTICE OF MUNICIPAL PROVIDER ...

Document Date: JANUARY 7, 2008 Number of Pages: 14

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: ROBERT HARDCASTLE

- ☐ Individual
☐ Corporate Officer — Title(s): MANAGER
☐ Partner — ☒ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: CIRCLE CITY WATER CO.

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

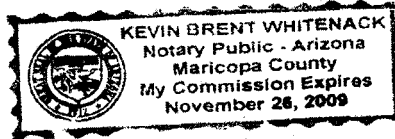
Signer's Name: LEE JAMIESON

- ☐ Individual
☐ Corporate Officer — Title(s): MANAGER
☐ Partner — ☒ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

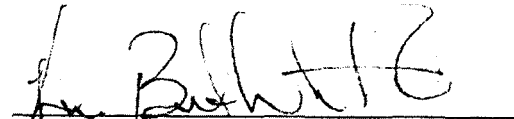
Signer Is Representing: CIRCLE CITY WATER CO.

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

STATE OF Arizona)
) ss.
County of Maricopa)



The foregoing instrument was acknowledged before me this 21 day of November, 2007, by Michael T. Cowley the Vice President of MRW Management Company, Inc. on behalf of SMT Investors Limited Partnership.


Notary Public

My commission expires:

11/26/09

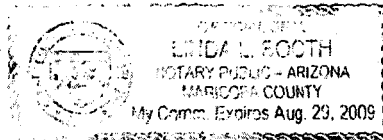
STATE OF Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 28 day of November, 2007, by Wilford R. Cardon the Manager of Boa Sorte, LLC on behalf of Boa Sorte Limited Partnership.


Notary Public

My commission expires:

Aug 29, 2009



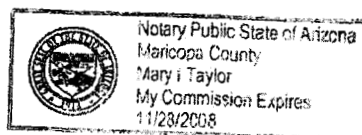
STATE OF Arizona)
County of Maricopa) ss.

The foregoing instrument was acknowledged before me this 29th day of November, 2007, by Christopher J. Cachens the Vice President of Harvard Investments, Inc. on behalf of Warrick 160, L.L.C.

Mary J Taylor
Notary Public

My commission expires:

11/28/08



STATE OF Arizona)
County of Maricopa) ss.

The foregoing instrument was acknowledged before me this 28 day of November, 2007, by Wilford R. Cardon the Manager of Cardon Family, L.L.C.

Linda L. South
Notary Public

My commission expires:

Aug 29, 2009

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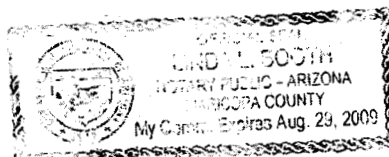


EXHIBIT A

The Property

Parcel No. 1;

The West half of the Northwest quarter of the Southeast quarter; and the North half of the Southwest quarter of the Southeast quarter; and the South half of the Southwest quarter of the Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Parcel No. 2;

The East half of the Northwest quarter of the Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Parcel No. 3;

The North half of the Southeast quarter of the Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Parcel No. 4;

The South half of the Southeast quarter of the Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Parcel No. 5;

The Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

Except the following Parcels A, B, C and D

A) The West half of the Northwest quarter of the Southeast quarter; and the North half of the Southwest quarter of the Southeast quarter; and the South half of the Southwest quarter of the Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

B) The East half of the Northwest quarter of the Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

C) The North half of the Southeast quarter of the Southeast quarter of Section 28,

Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

D) The South half of the Southeast quarter of the Southeast quarter of Section 28, Township 6 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

EXHIBIT B

Tax Parcel Numbers

<u>Tax Assessor Parcel Number</u>	<u>Tax Year</u>	<u>County</u>	<u>AMA</u>
503-13-004A	2007	Maricopa	Phoenix
503-13-004C	2007	Maricopa	Phoenix
503-13-004E	2007	Maricopa	Phoenix
503-13-004F	2007	Maricopa	Phoenix

EXHIBIT IV

RE: LP5000

Notebook: Litigation - PRAHIN
Created: 5/8/2013 5:06 PM
Author: Bob Hardcastle

Subject: RE: LP5000
From: Bob Hardcastle
To: Chris Cacheris
CC: Patrick Black
Date Sent: 5/3/2013 3:10:57 PM

I am surprised to learn of that, Chris, since at our last telecom we clearly agreed that the LP5000 project was not viable and unwinding the project was the only reasonable thing to do. As you requested, I had counsel research this issue extensively and determine the proper course of action based on your direction and concurrence. In the ensuing nearly month there should have been plenty of time to assemble the needed partner meeting to proceed according to this instruction.

I am directing counsel to proceed accordingly.

RTH
RTH@jaco.com

From: Chris Cacheris [mailto:ccacheris@harvardinvestments.com]
Sent: Friday, May 3, 2013 3:06 PM
To: Bob Hardcastle
Cc: Patrick Black
Subject: RE: LP5000

Bob- thank you but please hold on extinguishing/termination for the time being until I can convey a partner meeting and get final confirmation given details in this email. We will have partnership meeting ASAP. Thanks.

From: Bob Hardcastle [mailto:rth@brookeutilities.com]
Sent: Friday, May 03, 2013 2:59 PM
To: Chris Cacheris
Cc: Patrick Black
Subject: LP5000

Chris-

Pursuant to our telecom on April 12, 2013, I understand that Harvard has accepted payment responsibility for the engineering and legal invoices, as adjusted, previously submitted. We would appreciate your attention to these matters at your earliest convenience.

Further, you indicated that Harvard had determined that the LP5000 Project was, unfortunately, (a) currently non-viable, and (b) could not be determined when it would become a viable future project. Accordingly, we mutually agreed to cause the winding up of all arrangements between our companies and Harvard as it relates to this matter.

As such, you asked that I investigate what was required, and at what cost, to complete the winding up of such arrangements. Based on counsel's input and estimates, we believe the following items are involved in this issue:

- (a) Mutual termination of the regulatorily approved Water Facilities Agreement;**
- (b) Application for deletion of the CC&N related to the Project and extinguishment of any related conditions under ACC Decision No. 68246;**
- (c) Termination of the multi-party agreement between Harvard, CAGRD, and CCWCo LLC.**

Accordingly, counsel has researched this issue and advised that to accomplish these tasks would require approximately 90-120 days and cost approximately \$20,000. Counsel cannot, with precision, determine the final costs of these arrangements because the extent of the CC&N deletion and CAGRD de-enrolling requirements are not fully known at this time. I think

you are aware of how aggressively we manage all professional fees and costs, as we will in this case.

Based on our previous discussion I am approving counsel to proceed with these tasks as expeditiously as possible and, absent your objections, will complete same. I will keep you informed.

Please advise, if applicable.

Robert T. Hardcastle

President | Brooke Utilities, Inc.

P.O. Box 82218

Bakersfield, CA 93380-2218

(661) 633-7526

(855) 672-5057 fax

RTH@jaco.com

EXHIBIT V



Maricopa County

Environmental Services Department
Water and Waste Management

Subdivision Infrastructure &
Planning Program
1001 N. Central Avenue #150
Phoenix, Arizona 85004
Phone: (602) 506-1058
Fax: (602) 506-5813
TDD 602 506 6704

October 7, 2013

Mauricio Iacueli, P.E.
RBF Consulting
2929 N. Central Avenue, Ste 800
Phoenix, AZ 85012-2794

Re: Warrick Property; Public Water, MCESD #073777.

Dear Mr. Iacueli;

On June 17, 2008, the above referenced project received an Approval to Construct (ATC) for the public water (13,117 LF) system. The ATC expired on June 17, 2009 unless construction had been substantially started. MCESD has not received the required Approval of Construction (AOC) to allow for operation. This letter is a request for information on the projects status.

The above ATC has already expired because three years have passed since the date of issuance. If any construction is necessary, the project will have to be resubmitted for a new ATC in order to continue. Please resubmit the ATC application, fees and associated documentation. If the project has been terminated, please let us know.

Construction without a valid ATC is prohibited by County and State regulations and may result in legal action. Operation of the system without a valid AOC is also prohibited and may result in legal action.

If you have any questions regarding this letter, please contact me at 602-506-0376 or wshonerd@mail.maricopa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Wesley A. Shonerd".

Wesley A. Shonerd, P.E.
Senior Civil Engineer
Subdivision Infrastructure and Planning Program

Cc: Circle City Water Company
Warrick 160 LLC
MCESD File